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THESIS

**NONSTATE ACTORS AND THE OPEN BORDER
POLICY: THE BORDER SECURITY CASE STUDY OF
NEPAL AND INDIA**

by

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December 2014

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<p>13. ABSTRACT (maximum 200 words)</p> <p>Both scholars and politicians continually debate how to best address border security issues. As events such as 9/11 have proven, even when states implement a restricted border policy, that action may not be enough. It is the nonstate actors—individuals or organizations with significant political influence but not allied to any particular country or state—that significantly impact border relations. To better secure a border, whether restricted or open, these nonstate state actors must be maintained.</p> <p>This research examines three central border security issues: how and which nonstate actors influence the security of state borders, and whether countries can make borders more secure. The analysis focuses specifically on the bordering states of India and Nepal, two countries engaged in open border policy for military and economic reasons that, at the same time, face issues such as of transnational crime organizations, economic disparities, and political tension. Two case studies, one of an open border and one of a restricted border, provide a framework for analysis and recommendation for the challenges that Nepal and India face.</p> <p>At conclusion of this research, findings proved that it is indeed nonstate actors that have the most impact on border security. Despite open or restricted border policies being implemented, nonstate actors, such as criminal organizations, existed in the framing case studies as well as the border of Nepal and India. How each state chose to address these security issues varied. The U.S.-Mexico case study showed a restricted border where the U.S. enforced more security while Mexico implemented programs to improve border activity. The open border between Poland and Germany also saw an increase in criminal activity but used minimized use of border security. For India and Nepal the tools of a decent and valuable border security team are available to both these countries, but need to be implemented to better protect an open border.</p>				
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SECURITY CASE STUDY OF NEPAL AND INDIA**

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ABSTRACT

Both scholars and politicians continually debate how to best address border security issues. As events such as 9/11 have proven, even when states implement a restricted border policy, that action may not be enough. It is the nonstate actors—individuals or organizations with significant political influence but not allied to any particular country or state—that significantly impact border relations. To better secure a border, whether restricted or open, these nonstate state actors must be maintained.

This research examines three central border security issues: how and which nonstate actors influence the security of state borders, and whether countries can make borders more secure. The analysis focuses specifically on the bordering states of India and Nepal, two countries engaged in open border policy for military and economic reasons that, at the same time, face issues such as of transnational crime organizations, economic disparities, and political tension. Two case studies, one of an open border and one of a restricted border, provide a framework for analysis and recommendation for the challenges that Nepal and India face.

At conclusion of this research, findings proved that it is indeed nonstate actors that have the most impact on border security. Despite open or restricted border policies being implemented, nonstate actors, such as criminal organizations, existed in the framing case studies as well as the border of Nepal and India. How each state chose to address these security issues varied. The U.S.-Mexico case study showed a restricted border where the U.S. enforced more security while Mexico implemented programs to improve border activity. The open border between Poland and Germany also saw an increase in criminal activity but used minimized use of border security. For India and Nepal the tools of a decent and valuable border security team are available to both these countries, but need to be implemented to better protect an open border.

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LIST OF ACRONYMS AND ABBREVIATIONS

APF	Armed Police Force
BOP	Border Outpost
BPOL	Zoll/Bundesfinanzpolizei
BSF	Border Security Force
CBO	Congressional Budget Office
CBP	Customs and Border Protection Bureau
CPN-UML	Communist Party of Nepal-United Marxist-Leninist
CRS	Congressional Research Service
DHS	Department of Homeland Security
DUI	Driving Under the Influence
EU	European Union
IDENT	Automated Biometric Identification System
IED	Improvised Explosive Device
IPS	Indian Police Security
NDTV	New Delhi Television
SSB	Sahastra Seema Ball
SSN	Social Security Number
U.S.	United States
UAV	Unmanned Aerial Vehicle
UN	United Nations
UNICEF	The United Nations Children's Fund
USBP	United States Border Patrol
VIP	Very Important Persons

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I. INTRODUCTION

A. MAJOR RESEARCH QUESTION

This research analyzes how and which nonstate actors—an individual or organization with significant political influence, but without being allied to any particular country or state—influence the security of state borders, and whether countries can make borders more secure. By focusing on the bordering states of India and Nepal, this thesis addresses how nonstate actors affect border security independent of a state’s open or restricted border policy.

(For the purpose of this thesis, open and restricted borders are defined as follows: Open borders allow the movement of goods and people with few restrictions, while restricted borders require documentation and follow strict procedures enforced by state laws.¹)

Factors disrupting a state’s security require a government security management that goes beyond border policy governance, as key nonstate actors influence Nepal and India’s border security.² Accordingly, this study identifies which nonstate actors affect security by addressing and comparing each actor to a set of variables that may impact current open border policy. This research also indicates whether the nonstate actor requires additional controls or if a modified border policy is sufficient.

Consequently, India and Nepal’s external and internal policy procedures are evaluated as they apply to the migration of people and goods across international borders, social and political standing, and criminal activity. This thesis limits its research scope to border security policy and draws implications from Indian and Nepalese policy makers.

¹ Theresa Hayter, *Open Borders: The Case against Immigration Controls*, (Ann Arbor, MI: Pluto Press, 2004), 37–39.

² Subhkanta Behera, “Trans-Border Identities: A Study on the Impact of Bangladeshi and Nepali Migration to India,” ICRIER Policy Series, No. 1, May 2011, accessed November 4, 2013, http://www.icrier.org/pdf/policy_series_1.pdf.

B. IMPORTANCE

Border policy is a sensitive and complex issue for states. A single border policy with applicability to every state simply does not exist. Available resources and security concerns shape border policy, and since each state has different needs to address, problems with border security vary greatly. They encompass, for example, issues of trafficking, transnational organized crime, waves of migration, political relations, and trade. The aggregate of these activities creates the environment in which nonstate actors affect a border.

Essentially, countries without the enforcement of restricted borders share the same security concerns as states with restricted borders; however, open-border states also cope with the added complexity of managing nonstate actors.³ For states with an open border policy, it is a longstanding practice among governments to control social unrest by allowing the passage of goods and people between territories. In the process, governments build better relations with outside states.⁴ Open-border, nonstate actors often shape how governance affects state security. For instance, religious groups, transnational communities, and criminal organizations that moves freely between states impact social and political changes. The presence of one ethnic or religious group in another region can incite protests against outsiders, increase poverty, and possibly escalate criminal activity. Nonstate actors also can affect economic growth.

One of the most popular case studies for analyzing border policy is the one involving United States and Mexico.⁵ Researchers have given this particular border ample attention, because the two states share a restricted border policy, which often involves illegal immigration of goods and people. Immigration and the flow of goods frequently serve as fodder for political debate and social protest. The problems of the U.S.-Mexican border are applicable to many countries outside of the United States and

³ Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide*, (Ithaca, NY: Cornell University Press, 2009), 8, 29, 85.

⁴ "Nonstate Actors: Impact on International Relations and Implications for the United States," National Intelligence Officer of Global Economic Issues, accessed November 4, 2013, http://www.fas.org/irp/nic/nonstate_actors_2007.pdf

⁵ Andreas, *Border Games*, 8, 29, 85.

Mexico, as other countries have similar concerns and witness comparable reactions from their citizens. India and Nepal, for example, have the same issues of crime, mass migration, and political influence despite their open border.⁶

In the opposite spectrum, states that choose to change their border policy serve as another popular case study. Poland and Germany, for example, went from a restricted border policy to an open border policy by joining the European Union (EU) in 2004.⁷ The transition allowed for removed “internal borders and replaces them with a single external border, allowing for freedom of movement.”⁸ Despite the change of border policy, the Polish and German governments continue to address border security challenges, “including illicit trafficking of humans, arms, drugs, and contraband, as well as illegal immigration.”⁹ The decision to shift from a restricted border to an open border was made to improve relations throughout Europe; however, while adapting to meet the requirements of the EU, it has caused Poland and Germany to face even more obstacles in trying to address security threats.

Since the end of its monarchy (2008) and civil war (1996-2006), Nepal’s leadership has not been consistent in addressing political and social issues.¹⁰ Due to the current environment and the ability to move freely along the Nepalese-Indian border, the Nepalese look to India for relocation and job opportunities. According to case study conducted by Nepalese scholar Subhkanta Behera, “India and Nepal share a 1900 km border that runs along Uttar Pradesh, Bihar, West Bengal and Sikkim. Migration between

⁶ N Manoharan, “Demographic Deluge: Illegal Migration as a Security Threat to India,” Centre for Land Warfare Studies, last accessed October 1, 2013, http://www.claws.in/index.php?action=master&task=760&u_id=421.

⁷ Rick Nelson and Heather Conley, “Border Security in a time of Transformation: Two International Case Studies-Poland and India,” July 2010, 21, http://csis.org/files/publication/100709_Nelson_BorderSecurity_web.pdf.

⁸ Ibid., 6.

⁹ Ibid.

¹⁰ Kim Barker, “Mighty fall in Nepal: God-king is Reviled Calls Rising to Banish Long-revered Monarchy,” *Chicago Tribune*, May 15, 2006, http://articles.chicagotribune.com/2006-05-15/news/0605150159_1_maoist-insurgents-king-gyanendra-monarchy.

India and Nepal has been easy due to an open, porous border and strong familial links.”¹¹ India has a relatively high number of permanent Nepalese migrants, who often share a similar culture, ethos, and psyche with Indians. Nevertheless, while the Nepalese presence in India causes fewer disturbances than, for example, Bangladeshi immigrants, there is often animosity when the Nepalese try to maintain their Nepali roots within mainstream Indian society.¹²

Although the effects of mass migration are not fully apparent now, criminal and terrorist activity could increase over time.¹³ What remains unknown is how an increase in such activity would affect the border policy between the two nations. Would the border policy change, such as in the case of Poland and Germany, or would the governments regulate nonstate actors to retain security? Whether a border policy change would impact Nepalese-Indian relations is also uncertain. Similarly unknown is the impact that an unchanged border policy would have on nonstate actors. This thesis seeks to address all of these significant questions.

C. PROBLEMS AND HYPOTHESES

The distinction between open and restricted borders is not as marked as one might assume. The belief that restricted borders are more secure and that nonstate actors cannot impact the security of the border is simply false. Criminal activity still threatens restricted borders and all ports are susceptible to potential terrorist attacks. Having a restricted border does not necessarily prevent these activities from spilling over state lines.¹⁴ While, in reality, the restricted border merely presents an obstacle for criminal and terrorist activities, many believe that having a strict border policy in place translates to state security. Citizens might view restricted borders as safer because governments typically enforce a restricted border to deter criminal activity.

¹¹Subhkanta Behera, “Trans-Border Identities: A study on the Impact of Bangladeshi and Nepali Migration to India,” ICRIER Policy Series, No. 1, May 2011, accessed November 4, 2013, 2, http://www.icrier.org/pdf/policy_series_1.pdf.

¹² Ibid., 3.

¹³ Ibid., 5.

¹⁴ Hayter, *Open Borders*, 54.

Governments must go through a series of checks and balances in order to develop strategic action plans. Once officials define the threat, they can then develop a border security policy. That policy might include a plan to build physical barriers, revamp transportation systems, or expand the role of military forces; similarly, the policy might also conclude that less border management is sufficient.¹⁵ When officials develop security policies, they must also consider how border activity impacts crime and social issues. In the case of restricted borders, such as in the United States, having such strict policies is a direct response to external threats.¹⁶ Another argument, however, is that restricted borders encourage criminal activity by damaging relations between states.¹⁷

This thesis hypothesizes that border security depends on the status of nonstate actors, as they directly determine the border's level of security. Enforcing a restricted border, however, does not necessarily make borders more secure and there are ways to protect borders without necessarily closing them. Regardless of border policy, criminal activities and disruptive, nonstate actors are still concerns for states. The benefit of an open border is that it establishes positive relations between two states.¹⁸ Conversely, enforcing a restricted border can often strain relations. In the case of India and Nepal, identifying and addressing the nonstate actors defines what are the state's actual threats. Managing nonstate actors, rather than changing border policy, will increase the security of India and Nepal. Testing the hypothesis will determine whether changes in border policy impact a state's external and internal threats.

D. LITERATURE REVIEW

To fully understand how nonstate actors affect border security, this thesis will explore two areas of research: the concepts of border security in terms of restricted borders, open borders, border management, border policy, nonstate actors, the

¹⁵ Judith Ann Warner, *U.S. Border Security: A Reference Handbook* (Contemporary World Issues), (Santa Barbara: ABC-CLIO, 2010), 30–31.

¹⁶ Eric L. Olson and Christopher E. Wilson, *Beyond Merida: The Evolving Approach to Security Cooperation*, Woodrow Wilson Center for International Scholars (San Diego: Trans-Border Institute, University of San Diego, 2010), 3–5.

¹⁷ Hayter, *Open Borders*, 60–64.

¹⁸ *Ibid.*, 161.

rebordering process, and border theory, and the current relations between India and Nepal, as well as each state's perspective on border security. State development and policy always consider border security when coordinating regional strategies to address emerging threats. These threats are increasingly taking on a networked, transnational character. Seldom confined to single countries, they can subtly subvert borders and undermine governments and laws.¹⁹ Border policy continually shifts based on political and social changes.²⁰ This review will show several research articles, published books, and various government documents, and the many states that are increasingly concerned with border security issues. These articles are particularly focused on the potential effects of terrorism, crime, social and political issues associated with illegal immigration, the cost of managing borders, and demographic changes caused by mass migration. These issues are ongoing themes of research regarding border security concerns. Despite location, or the viewpoint of policy makers, security forces, or locals, these concerns are repeatedly mentioned. Although not specifically stated, these items emphasize the impact and importance of nonstate actors. For instance, the concerns for illegal immigration and criminal activity related to the Mexican and U.S. border have been linked to Mexican drug cartels, a nonstate actor.²¹

1. Nonstate Actors

As defined by academic scholar Gallya Lahav, “nonstate actors . . . have the ability on the economic and/or political resources to facilitate or curtail travel, migration, and return.”²² These nonstate actors can appear on either the international or domestic

¹⁹ Patrick Cronin and Brian Burton, “Beyond Borders: Developing Comprehensive National Security Policies to Address Complex Regional Challenges,” Center for New American Studies, December 2010, 5, http://www.cnas.org/files/documents/publications/CNAS_BeyondBorders_CroninBurton.pdf.

²⁰ “Migration and Security: The Role of Nonstate Actors and Civil Liberties in Liberal Democracies,” September 20, 2013, 92–93, http://www.un.org/esa/population/meetings/secoord2003/ITT_COOR2_CH16_Lahav.pdf.

²¹ Shelly Wilcox, “Open Borders Debate on Immigration,” San Francisco State University, accessed October 2, 2013, 5, http://online.sfsu.edu/swilcox/Swileys_webpage_files/Wilcox,%20The%20Open%20Borders%20Debate%20on%20Immigration.pdf.

²² Gallya Lahav, “Migration and Security: The Role of Nonstate Actors and Civil Liberties in Liberal Democracies,” State University of New York at Stony Brook, September 20, 2013, 89, http://www.un.org/esa/population/meetings/secoord2003/ITT_COOR2_CH16_Lahav.pdf.

level. They include, but are not limited to, the following: visa policies, airlines, families, schools, detention centers, jails, nonstate criminal actors (terrorists and organized criminals), human trafficking, technology, and corruption. As states respond to disruptive nonstate actors, which have implications for transnational threats and increased crime along borders, it is important that states maintain positive relations with the international community.²³ Although nonstate actors often bring in negative aspects of security, they also have a somewhat backwards way of generating economic and other benefits. Specifically, the United States sees this in its southern border immigration. According to border security expert Judith Warner, “while much of this illicit trade brings great misery and sorrow to many, so too does it provide jobs and buoys up sagging economies, often blending seamlessly into busy commerce.”²⁴

This concept also applies to developing countries such as India and Nepal.²⁵ By having an open border, there are some positive implications for India and Nepal including convenience in movement and travel, strengthening mutual ties, quick emergency response and assistance, medical service, competitive market, supply of local labor, and enhancing economic benefits for residents along the border.²⁶ In addition, researcher Theresa Hayter argues that there are benefits, more so with open borders, to encouraging migration. She also argues that the economic benefits are based on remittances, or money saved by migrant workers and sent back to their families.²⁷ Although states have difficulty tracking the amounts, remittances have advantages over other forms of international finance.

While there are some benefits that result from nonstate actors, they often come at a price—illegal actions or other activities that endanger the security of a state. As a result, the research always discusses the issue of nonstate *criminal* actors. Since 9/11, governments commonly fear terrorism and criminal threats surrounding their borders.

²³ Warner, *U.S. Border Security*, 41–43.

²⁴ *Ibid.*, 42.

²⁵ Buddhi Narayan Shrestha, *Border Management of Nepal* (Kathmandu, Nepal: Bhumichitra, 2003), 1–33.

²⁶ *Ibid.*, 82–84.

²⁷ Hayter, *Open Borders*, 166.

Border crime is one of the largest factors that governments' consider when developing border policies and security strategies. Criminality is also the single consistent variable, regardless of a state's border policy.²⁸ Many governments protest having an open border because they believe that it will increase criminal activity. The Congressional Research Service (CRS) reported statistics on criminal activity, concluding, that the United States has focused on the "expeditious removal of such aliens has been a statutory priority since 1986, and the Department of Homeland Security (DHS) and its predecessor agency have operated programs targeting criminal aliens since 1988."²⁹

U.S. statistics from a CRS report in 2011 show that the number of criminal aliens in state prisons, local jails, and federal prisons has increased and that the overall percentage of noncitizens in jail corresponds closely to the proportion of noncitizens in the total U.S. population.³⁰ The United States, which maintains a tightly enforced restricted border, has adopted forms of immigration control that specifically target criminal aliens. Since 2005, the United States has focused its efforts and funding on containing criminal aliens.³¹ By monitoring illegal aliens, governments enforce security measures without necessarily changing border policy. The question remains, however, as to why would criminal aliens present a greater security threat than do domestic criminals? Also, how does CRS measure crime levels in its reports? If the United States had an open border, would it still consider these individuals such a dire threat? To answer these questions, one must define the term "criminal alien." In the case of the United States, this term as defined by the CRS report, means that the government has "identified certain crimes of moral turpitude that make an alien ineligible for admission to the United States and/or subjects to deportation."³²

²⁸ Terry Goddard, "How to Fix a Broken Border: Disrupting Smuggling at Its Source," Immigration Policy Center, February 2012, 4–9, <http://immigrationpolicy.org/sites/default/files/docs/Goddard%20Part%20II%20-%20Smuggling%20020112.pdf>.

²⁹ Marc Rosenblum and William Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens* (Washington, DC: Congressional Research Service, 2013), 1.

³⁰ Ibid.

³¹ Ibid., 3.

³² Rosenblum and Kandel, *Interior Immigration Enforcement*, 4.

The research on Nepalese and Indian security argues that these types of offenses are common. Nonstate actors, such as terrorist and organized criminal groups, have created potential security breaches for these two countries. Other issues include cross-border terrorism, illegal arms transactions, trafficking in women, drug trafficking, weak peace and security operations, kidnapping, theft and robbery, and a degeneration of political values.³³ The need to improve their security response and adopt preventive measures is a high priority for both India and Nepal; however, the need to address such issues has also caused tension among the two countries. Security issues concerning nonstate actors are an issue for both countries. As an example Nepalese scholar, Shrestha, “India blames Nepal for allowing Pakistani ISI agents and Maoist rebels entry into their country to commit destructive crimes via the Nepalese border.”³⁴

Similarly, a recent CRS case study reports that Nepal identified at least 17 different types of crimes surrounding the open border.³⁵ Among the most damaging crimes are those related to terrorist actions and connections to international gangs. Once CRS published its results, investigators and researchers looked deeper into the meaning behind the high volume of criminal activity. The study revealed that various connections exist among underground, armed outskirts of Nepal, India, and the international criminal groups.³⁶ Similarly, the United States currently fears cartel activity and trafficking (both in people and illegal drugs) along its border.

According to government documentation and other research used for this thesis, states with restricted and open borders deal with issues of criminal activity along their border. Research also suggests that there are other contributing factors, such as corrupt security forces, and a lack of manpower and monitoring equipment, that lead to such criminal activities.³⁷ Bribery usually accompanies corruption, while a lack of funding causes manpower and equipment issues. Prejudice and stereotypes also create problems.

³³ Shrestha, *Border Management of Nepal*, 84–95.

³⁴ *Ibid.*, 84.

³⁵ “Nepal Identifies 17 Crimes Committed on Its Border with India,” IBN News, August 31, 2013, <http://ibnlive.in.com/news/nepal-identifies-17-crimes-committed-on-its-border-with-india/418551-2.html>.

³⁶ *Ibid.*

³⁷ Hayter, *Open Borders*, 59–67.

Theresa Hayter's book, *Open Borders: The Case against Immigration Controls*, states that "immigration controls, in addition, sanction racist behavior by the authorities."³⁸ Restricted border states more commonly see this when they associate immigration with negative political issues such as security threats.

2. Concepts of Open and Restricted Borders

The phrases "open border" and "restricted border" are important terms in border security research. While the literature might underemphasize the terminology's significance, it directly impacts how states implement their border policy in relation to nonstate actors. It is also important to note which nonstate actors that states might view as significant. The majority of research advocating open borders repeatedly clarified that having an open border is not equivalent to abolishing borders.³⁹ In short, open borders still require maintenance. As Shelly Wilcox's article, "Open Borders Debate on Immigration," stated, the "freedom of international movement is a basic liberty, possessed by all persons . . . and includes the right to immigrate to the country of one's choice."⁴⁰ While advocates for open borders maintain that open borders uphold basic human rights and create positive interstate relations, proponents of restricted borders argue that a restricted border protects citizens' liberty. States prevent external threats, which could damage state freedoms by implementing strict immigration policies and tightening border security. The primary focus of a restricted border is to prevent people from crossing over illegally and settling in a new state, and many states view groups of illegal immigrants as a possible threat. Whether these immigrants are an actual threat or merely an implied one is less important.⁴¹ When states close their borders, they are making a strong political statement. It is also theorized by scholars that a restricted border "maintains peace and security or law and order within their territories."⁴² In the case of

³⁸ Hayter, *Open Borders*, 35.

³⁹ Shelly Wilcox, "Open Borders Debate on Immigration," San Francisco State University, accessed October 2, 2013, 2–4, http://online.sfsu.edu/swilcox/Swilcox/Shelleys_webpage_files/Wilcox,%20The%20Open%20Borders%20Debate%20on%20Immigration.pdf.

⁴⁰ *Ibid.*, 3.

⁴¹ Goddard, "How to Fix a Broken Border," 2–3.

⁴² Shrestha, *Border Management of Nepal*, 55.

the Indian-Bangladesh and the U.S.-Mexican borders, states build a border fence, which is a visible symbol of border enforcement and reflects on states' attempt to regain control of their border.⁴³ Border security analyst, Peter Andreas states in his book *Border Games*, "By disrupting the traditional routes and methods of clandestine entry, the intensified border control campaign has transformed the once relatively simple illegal act of crossing the border into a more complex system of illegal practices."⁴⁴ As restricted borders make more attempts to prevent people or goods from crossing over, immigrants' methods for breaking such barriers also advance.

Although the literature adds much to the dialogue in the debate over open and restricted borders, there is no consensus as to what is best for securing a state's border.⁴⁵

3. Rebordering Process and Border Theory

The concept of border theory is to provide theoretical guidance in understanding the complexities of cross-border environments.⁴⁶ The movement of goods and people from different territories can impact states culturally, economically, and politically. This impact according to Hayter causes, "borders delineate cultures, races, economies, and the boundary of governmental institutions that have sovereignty over a definite territory and population."⁴⁷ These types of impact can often have a ripple effect, resulting in a need to tighten security along the border.⁴⁸

The extra precautionary steps in securing border lines can often lead to the process of rebordering territories. Prime examples of rebordering are commonly seen in North America and throughout European history. The processes of rebordering can cause strained relations if states go through a back-and-forth routine of rearranging their border

⁴³ Andreas, *Border Games*, 148.

⁴⁴ Ibid., 95.

⁴⁵ Olson and Wilson, *Beyond Merida*, 3–5.

⁴⁶ Celene Navarrate, Sehl Mellouli, Theresa A. Pardo, and J. Ramon Gil-Garcia, "Information Sharing at National Borders: Extending the Utility of Border Theory," (paper presented at the 42nd Hawaii Internal Conference on System Sciences, Manoa, Hawaii, 2009). Accessed December 4, 2013, http://www.ctg.albany.edu/publications/journals/hicss_2009_borders/hicss_2009_borders.pdf.

⁴⁷ Ibid.

⁴⁸ Hayter, *Open Borders*, 65–72.

policies. Associate Professor Carsten Yndigegn from the University of Southern Denmark, stated in an academic paper on rebordering strained relations occur because “borders divide people between known and unknown, between native and foreign, and between us and them. Drawing borders imply that mental divisions are created among the populations on each side of the border. Former identifications turn into oppositions, if previous local identities are overlaid by new, different national identities.”⁴⁹ The rebordering process ultimately requires cross-border coordination, which can result in cultural and language barriers. Such obstacles become more apparent while people are traveling, communicating, and settling along the border.⁵⁰

4. Threats to Border Security: India and Nepal

India and Nepal are prime examples of two states that, in many social and political aspects, function with an open border policy in place. The Treaty of Peace and Friendship established between India and Nepal during the 1950s encouraged peace between the countries and their governments.⁵¹ The treaty also promoted an open border in order to enhance Nepal’s security with the movement of materials through India.⁵² Relatively recent organized terrorist events, however, have changed the internal security of each state. Both India and Nepal have experienced Maoist insurgent movements, which, along with religious extremism, have become increasingly violent.⁵³

Perhaps India’s most notable terrorist event was the 2008 three-day siege of two hotels in Mumbai, which demonstrated India’s difficulties with internal and external border security. The attack forced India to focus on internal security and to take control of managing its land borders.⁵⁴ To address its internal problems, India must examine

⁴⁹ Carsten Yndigegn, “Between Debordering and Rebordering Europe: Cross-Border Cooperation in the Øresund Region or the Danish-Swedish Border Region,” *Eurasia Border Review* 2, no. 1, (2011) Slavic Research Center, accessed December 4, 2013 <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=133166>.

⁵⁰ Ibid.

⁵¹ Leo E. Rose, *Nepal Strategy for Survival* (Kathmandu, Nepal: Mandala Book Point, 1971), 277.

⁵² “Indian Treaty Series,” accessed October 1, 2013, <http://www.commonlii.org/in/other/treaties/INTSer/1950/12.html>.

⁵³ Shrestha, *Border Management of Nepal*, 84–85.

⁵⁴ Nelson and Conley, “Border Security in a Time of Transformation,” 19.

border security issues; given that India has six neighboring countries besides Nepal. India's border security is also significant for Nepal; whatever threats exist in India can easily spill over into Nepal.

Several articles reference India and Nepal's friendly open border relations, but they also identify that both states have some type of border security force. Both India and Nepal use paramilitary forces to respond to issues around the border.⁵⁵ Since 2004, India has used the services of the Department of Border Management. Unlike restricted border states, the primary purpose of this entity is to build infrastructure such as roads and fences, and to install some surveillance priorities, such as flood lighting borders.⁵⁶ The India-Nepal border is roughly 1,751 kilometers, has six entry points, and civilians and paramilitary forces jointly run it. It is India's only open border; all of its other borders, with Pakistan, China, Afghanistan, Bhutan, Burma, and Bangladesh, remain restricted.⁵⁷

When people have the ability to move freely across borders, governments are sometimes concerned with national identity. People frequently cross with debatable citizenship documents and a lack of identification makes it very easy for criminal groups to move between the two states.⁵⁸ The biggest threat for the open Indian-Nepalese border is the movement and illegal activity of Maoist insurgents. Over the last decade, this group has grown in strength and has been smuggling merchandise, drugs, weaponry, and participating in human trafficking in India and Nepal. Although there is a border protection force, the Sahastra Seema Ball (SSB), which attempts to monitor these specific threats, they have minimal authority and ability to curb these activities. Both India and Nepal should be concerned about these activities, as countries without a restricted border with India could use Nepal as a staging area for actions against India. Although India could close its borders to Nepal, doing so could potentially damage long-standing

⁵⁵ Shrestha, *Border Management of Nepal*, 97–101.

⁵⁶ Nelson and Conley, "Border Security in a Time of Transformation," 21.

⁵⁷ *Ibid.*, 29.

⁵⁸ Shrestha, *Border Management of Nepal*, 74–80.

relations and could negatively impact the Nepalese government's strength by limiting resources (i.e., trade of merchandise, fuel, and food).⁵⁹

E. METHODS AND SOURCES

By using two border policy case studies (i.e., Poland and Germany, along with the United States and Mexico), this thesis will research, analyze, and utilize methods applicable to current Indian-Nepalese relations. The Poland and Germany case study focuses on a state that went from a restricted to an open border policy. Reports by the Center for Strategic and International Studies deal with the transition of Poland and Germany to an open border. In 2004, Poland joined the EU, opening its borders to the rest of Europe.⁶⁰ While many researchers believe that the opening improved relations between Poland and other European countries, it did not eliminate the preexisting border security issues associated with criminal activity and illegal immigrants. The external land borders with Germany are a common site of frequent illegal and illicit activity.⁶¹ There are roughly 3,298 illegal border crossings, a number much higher than other EU countries located in Eastern Europe.⁶² The rise of criminal activity in Poland crosses over to the border of Germany. Reportedly, Polish criminal organization activity increased, specifically with car thefts around the border city of Brandenburg, once border restrictions were limited.⁶³ The research evaluates the policy change's impact on crime, European relations, and demographic changes.

At the other end of the spectrum, the United States strictly enforces its border with Mexico as a restricted border.⁶⁴ Cases studies from the Immigration Policy Center and Congressional Research reports will be evaluated for data on terrorism and criminal activity. These nonstate actors that impact the United States' restricted border policy are

⁵⁹ Shrestha, *Border Management of Nepal*, 98.

⁶⁰ Nelson and Conley, "Border Security in a Time of Transformation," 21.

⁶¹ *Ibid.*, 7.

⁶² *Ibid.*

⁶³ "Car-theft Epidemic at the Border with Poland," *The Economist*, September 13, 2013, <http://www.economist.com/blogs/charlemagne/2013/09/crime-germany>.

⁶⁴ Hayter, *Open Borders*, 12–13.

similar to that of India and Nepal. Yet, the United States has mainly decided to maintain a restricted border to enforce its security, which is the same reason Nepal has chosen to have an open border policy. By choosing to maintain an open border policy with India, Nepal can utilize the more advanced security resources of the Indian government. If a restricted border policy were enforced, would Nepal be able to take advantage of such resources? This thesis evaluates changes in demographics, Nepalese-Indian relations compared to U.S.-Mexican relations, reasons for current border policies, and criminal activity.

From these case studies, primary books, and government reports, this thesis focuses on the reasoning behind policy changes, nonstate actors, and what adjustments states have made in their security. This thesis demonstrates that regardless of whether Nepal's or India's border policy remains open or restricted, nonstate actors have determined the security of the borders.

F. THESIS OVERVIEW

This thesis focuses specifically on how nonstate actors and border management processes answer the major question of “Do nonstate actors influence the security of border policies; determining whether or not a border can be made more secure?” By examining research on India and Nepal, and comparing it to two popular border case studies (i.e., the United States and Mexico, and Poland and Germany), this thesis shows how nonstate actors influence border policies and how states alter security through the implementation of these policies.

Specifically, Chapter II will showcase the relations between India and Nepal—how these governments interact, as well as how these governments have experienced social and political changes. The reason for the open border policy and the nonstate actors, such as social conflict, crime, and economic factors, will be evaluated. The current security of Nepal as well as social reform and current relations with India will also be of importance for the purposes of this research. The importance of the current legal and organizational frameworks will also be evaluated in terms of how they influence the development of border policy and impact border security. Chapter III will take case

studies mentioned previously, and compare these studies to Nepal's and India's current border policy in Chapter IV. Dealing with the consequences of restricted borders and unrestricted borders, as well as defining the principle threats of nonstate actors for each case study, will be used specifically for the analysis. The conclusion will reflect on the analysis and background information to reach a summation on the impact of nonstate actors.

II. NEPAL AND INDIA RELATIONS: TRADITIONS AND CURRENT BORDER PROTECTION PRACTICES

A. HISTORY OF INDIA AND NEPAL RELATIONS

India and Nepal have a lengthy shared history, given their geographical locations causing many of their cultural similarities. Nepal shares its eastern, western, and southern borders with India, and its northern border with China as Figure 1 indicates. The two countries have established and shared several treaties, border policies, and political movements. Meanwhile, current social issues, such as crime, continue to shape their relationship. While treaties, policy, and social issues are important, which this chapter discusses later, understanding how the cultural similarities between these two countries came to be offers a better understanding of their relationship and is important for this thesis because it helps explain the current open border. Two important factors that define these similarities are marriage and religion. Although Hinduism has been a part of Nepal for many years, the high-caste Hindus who migrated to Nepal during the Muslim invasion of India in 1175 formed the foundation for many of Nepal's social, economic, and political structures. According to a leading Western specialist on Nepal, Leo Rose, high-caste Hindus have had great influence due to the fact that they "form the local elites wherever they reside, and have long dominated political institutions at the central level."⁶⁵ These elite societies and relationships between Nepal and India became more important as arranged marriages assured continuity of friendly and professional relationships between elite families across the border. According to a leading Western specialist on Nepal, Leo Rose, "for several hundred years, for instance, the various ruling dynasties of Nepal have intermarried as a matter of policy with Indian families of equivalent caste status, and this has resulted in a massive exchange of elites that have been of fundamental social, cultural, and political importance."⁶⁶ Creating these family

⁶⁵ Rose, *Nepal: Strategy for Survival*, 7.

⁶⁶ *Ibid.*, 8.

and business ties melded Indian and Nepalese families, forging important social bonds.⁶⁷ According to the Journal of Asian Studies, intermarriage helps respond to changes in affinity and in the economy.⁶⁸ For example, Rose states that “to change from a system relying principally on agriculture to one that relies largely on travel involves learning a different set of skills, some of which may be caste relevant.”⁶⁹ When there is intermarriage in caste and ethnic groups, trade of goods and cultural practices evolve, which creates a societal change. In addition, through intermarriage, ethnic and social boundaries diminish any negative, preconceived notions of another group, as we see in the case of India and Nepal. This promoted better working relations for the two countries. Currently, due to ethnic intermarriage, Nepal and India have a remarkably diverse population to include ethnicity, language (English, Hindu, and Nepalese), and religion.⁷⁰

Despite this diversity, Hinduism is the predominant religion in both Nepal and India. It joins families together and offers a shared understanding between the two countries. This is significant to the countries’ relations as Nepal is an official Hindu state and India is the most populated Hindu country.⁷¹ According to Nepal’s embassy’s country history brief, “religion is perhaps the most important factor, and plays a predominant role in shaping the cultural relations between these two countries.”⁷² In addition, “several places of pilgrimage in Nepal are visited by thousands of Indians each year, and tours of the major Hindu shrines in India are considered a duty by many devout

⁶⁷ The caste system in India, spilling into Nepal, is very important to the functions of Hindu society. The caste system defines social classes: Brahmin (priests), Kshatriya (military), Vaishya (merchants), and Sudra (service providers, artisans), and then the “untouchables.” Marriage is a form of maintaining family business and social classes. The Indian and Nepalese people consider marriages (not love marriages) as more of a business transaction in that they keep societies functioning. Richard Burghart, Models of the Hindu Social System, Royal Anthropological Institute of Great Britain and Ireland, accessed August 12, 2014, <http://www.jstor.org/stable/2801246>.I

⁶⁸ Nancy Levine, “Caste, State, and Ethnic Boundaries in Nepal,” *The Journal of Asian Studies*, Association for Asian Studies, accessed August 14, 2014, 81–83, <http://www.jstor.org/stable/2056667>.

⁶⁹ Ibid., 82.

⁷⁰ Levine, “Caste, State, and Ethnic Boundaries,” 72–74.

⁷¹ Hinduism, accessed August 1, 2014. <http://www.umich.edu/~aamuhist/snullang/pubspeak.htm>.

⁷² Embassy of Nepal, “Nepal-India Relations,” New Delhi, accessed August 1, 2014, <http://www.nepalembassy.in/socioculrel.htm>.

Nepalis.”⁷³ Hinduism is a mechanism that brings together a large group in both the countries to participate in important religious events.⁷⁴ Since India is the location for many of the sacred sites, it is important for practicing Nepalese Hindus to be able to gain access to India. Consequently, for many Nepalese and Indians, religion is significant to their identity. Nepalese and Indian leaders’ pilgrimages also are often part of political diplomacy. When relations are at a low, visits from officials demonstrate positive relations and respect for each other’s countries.⁷⁵



Figure 1. Map of Nepal and Surrounding Neighbors⁷⁶

As stated earlier, India and Nepal’s shared history is the basis for much of their current relations.⁷⁷ The open border allows for the exchange of activities, such as trade and cultural practices. Historically, wars and colonization influenced their established

⁷³ Hinduism, 9.

⁷⁴ Surinder Mohan Bhardwaj, *Hindu Places of Pilgrimage in India: A Study in Cultural Geography* (University of California Press: Berkeley and Los Angeles, 1983), 2–3.

⁷⁵ Shrestha, *Border Management of Nepal*, 3.

⁷⁶ Wpmap.org, “South Asia Map Outlines,” accessed September 22, 2014, <http://www.wpmap.org/category/asia-maps/page/2/>

⁷⁷ Rose, *Nepal: Strategy for Survival*, 15.

treaties and changes in government, and defined many important aspects of their relations. For example, the decision from leaders during times of war affects the two states' political and economic interactions and current border management practices. The open border and close historical relationship have impacted and continue to influence these relations. This chapter seeks to explain the evolution of the relationship between the Nepalese and Indian governments, how the two countries have developed their shared border through agreements, as well as economic and social relations. The next section will discuss the evolution of the Indian and Nepalese governments. This analysis will characterize Chapter IV's examination of the border security issues between Nepal and India.

1. Evolution of the India Government and Its Border Policy

To characterize Chapter IV's border analysis of India and Nepal, this chapter offers a history of both countries and provides the background for current Nepalese-Indian relations, as well as each government's foreign policy imperatives. For instance, the evolution and independence of India affected the Indian government's perspective on their view of territory and border policy. Prior to India becoming an independent democratic state, the British East India Company ran the country. Indian politics under British rule enforced the concept of expanding territory for political gain. Thus, this form of management as stated by Nepalese scholar, Vidya Bir Singh Kansakar, "started the colonization, expansion, and consolidation of Indian states and principalities through invasion. [The British East India Company] was planning to invade Nepal after the death of King Prithvinarayan Shan."⁷⁸ The invasion of Nepal would have expanded British control over South Asian territories; however, an earlier peace treaty that the British East India Company and Nepal signed on December 8, 1816, prevented the invasion of the country.⁷⁹ The 1816 Treaty, also known as the Treaty of Sugauli, is not only significant in that it prevented a British-run India from taking over Nepalese territory, but it also

⁷⁸ Vidya Bir Singh Kansakar, "Nepal-India Open Border: Prospects, Problems, and Challenges," FES-Nepal, accessed May 5, 2014, 2, http://www.nepaldemocracy.org/documents/treaties_agreements/nep_india_open_border.htm.

⁷⁹ Ibid.

emphasized an open border and restored lands to Nepal.⁸⁰ This treaty provided the framework for many other treaties between the two countries after 1947. This chapter later explains the military and economic reasons for the open India-Nepal border. With the 1816 Treaty, Nepal agreed to India's desire for an open border to regain their previously claimed land. In reality, this was a militarily and economically strategic move for India.⁸¹ The open border was important to the British administrators of India for two primary purposes:

- According to Nepal history expert, Kansakar, "The first was to maintain unrestricted migration of [the] Nepalese hill people to India and to procure them for recruitment in the Indian Army."⁸² This type of migration and recruitment had been difficult prior to the treaty. At the time, a strong British-Indian military sent the message that the Indian military would benefit from international recruits. By keeping an open border, India had the ability to recruit more military personnel and Nepal had access to military capabilities and training.
- The second reason for the open border was the importance for the "British to have free access of British and Indian manufactured goods into Nepal."⁸³ An open border would secure the easy access and movement of raw material throughout the two nations.

Although the 1816 Treaty eliminated a restricted border policy, it failed to mark the physical border between Nepal and India. Later, these unmarked lands caused tension between the two governments, as it was unclear which country had the power to rule and regulate specific border regions. Consequently, the Prime Minister of Nepal, Jung Bahadur, spent two decades trying to resolve Indian and Nepalese issues. For example, officials conducted a physical survey and determined whether either country had encroached on the other and whether ill-defined boundaries existed. If the official discovered a missing or broken pillar, they sought to fix it in an efficient and

⁸⁰ Mangal Siddhi Manandhar and Hriday Lal Koirala *Tribhuvan University Journal*, XXIII, no. 1, June 2001, accessed October 2, 2014, <http://www.nepjol.info/index.php/TUJ/article/viewFile/4550/3782>.

⁸¹ Slesh A. Shrestha, "Human Capital Investment Responses to Skilled Migration Prospects: Evidence from a Natural Experiment in Nepal," University of Michigan, November 15, 2011, 7, <http://www-personal.umich.edu/~slesh/jobmarketpaper.pdf>.

⁸² Kansakar, "Nepal-India Open Border," 2.

⁸³ Ibid.

collaborative manner.⁸⁴ This practice ceased to exist, however, when India became an independent state. Under British rule, India was the driving force in supporting the Nepalese economy and government because of their desire for more military recruits and open trade. When India became independent, thus diminishing British interest in Nepal, the nature of Indian's relations with Nepal changed.⁸⁵ Instead of being equals, the reality is that India is more powerful militarily and politically than Nepal. Nepal, being a smaller and less politically stable country, has often had to rely on India and, consequently, has had to ensure that they do not jeopardize their relations with India.

India, also known as the Republic of India, is now a functioning democracy.⁸⁶ As India became independent, its officials became concerned about their role in the international community and its domestic relations. Subsequently, the enforcement of maintaining the Nepalese-Indian border became less of a priority because funding and manpower were focused on other political and social priorities. Indian officials' failure to prioritize border issues, and their inability to view the open border as a potential threat to the nation, led the state to downplay the border's role in India's internal security. In fact, Indian and Nepalese officials have still not conducted or coordinated an evaluation of their shared border since Prime Minister Jung Bahadur's initial joint survey.

2. Evolution of the Nepalese Government and Border Policy (1769–Present)

Historically, Nepal's ruling government has been a monarchy, the most notable and relevant of which for this thesis is that of the Shah Dynasty, which Prithvi Narayan Shah established in 1769. This changed in the nineteenth century, when the Ranas came to power. The Ranas were not kings, but were generals who monopolized power and turned the king into a nominal figurehead and then made the prime minister a hereditary

⁸⁴ Kansakar, "Nepal-India Open Border," 2.

⁸⁵ Surya P. Subedi, "The Himalayan Frontier Policy of British-India and the Significance of the 1923 Treaty of Friendship between Great Britain and Nepal," *The Britain-Nepal Society Journal*, no. 207 (2003): 37, http://himalaya.socanth.cam.ac.uk/collections/journals/bnsj/pdf/bnsj_27.pdf#page=37.

⁸⁶ "The Constitution of India," last modified December 1, 2007, <http://lawmin.nic.in/coi/coiason29july08.pdf>.

position.⁸⁷ In 1951, Nepalese officials abolished the hereditary rule, which marked the beginning of Nepal's struggle for democracy. This reform led to a clash that reproduced the absolute monarchy in 1962, banning the formation of political parties and allowed for the king's autocratic rule until the 1990s.⁸⁸ Protests from the banned prodemocracy political parties led to the 1990 adoption of a constitutional monarchy and development of a multiparty democracy. This arrangement meant that the king would be the head of state, while the prime minister was the head of the government.

The change in rule was successful for a time, but by 1996, the Nepal Maoist insurgency group had emerged, which led to the decade-long Nepalese Civil War, better known as the "People's War." The Maoist insurgency claimed that the neither the king nor the democratic government provided for the poor in the rural areas and led an insurgency against the system, which lasted for a decade. The movement's ultimate goal was to overthrow the government, abolish the monarchy, and establish a republic.⁸⁹ The Maoist movement marked the beginning of political instability, which remains present in Nepal. The Nepalese Army failed to control the insurgency because the Army was controlled by the monarchy, which saw this as a way to balance the democratic opposition, and the police lacked sufficient resources. In 2001, the Maoist war grew very intense, which caused the government to establish a paramilitary group, the Nepalese Armed Police Force (APF), to contain the Maoist party.⁹⁰ Between 2007 and 2008, a cease fire and a compromise with the Maoists led to the abolishment of the monarchy and the declaration of Nepal as a secular republic. The elected constituent assembly, led by the Maoists, predicted that it would take two years to draft and finalize a new constitution. The constitution was to create a government structure reflective of a representative system and it would recognize the security institutions capable of

⁸⁷ Harka B. Gurung, *Nepal Social Demography and Expressions* (Kathmandu: New ERA, 1998), 17–26.

⁸⁸ Karen Cochran-Budhathoki and Colette Rausch, "Nepal in Transition: Developing Security and Rule of Law Strategy," United States Institute of Peace, 2007, accessed July 21, 2014, <http://www.usip.org/publications/nepal-transition-developing-security-and-rule-law-strategies>.

⁸⁹ Ibid.

⁹⁰ Government of Nepal, "Nepalese Armed Police Force," accessed July 21, 2014, <http://apf.gov.np/>.

protecting both the Nepalese democracy and the nation.⁹¹ Unfortunately, the assembly has been unable to write the constitution and, since the end of the monarchy, all attempts have failed. The first noted constitutional failure occurred in May 2012. This failure further complicated Nepal's ability to allocate roles and responsibilities for Nepalese security institutions, specifically the Armed Police Force (APF), the current border security force in Nepal.⁹² Shortly after, in 2013, additional political outbursts occurred when the creation of a Truth and Reconciliation Commission, to investigate crimes committed during the civil war, was not approved.⁹³ Many citizens who had suffered losses from the Maoist insurgency expressed outrage and injustice with this political decision. By the end of 2013, Nepal attempted to put another assembly together to write a constitution, but the endeavor failed as political parties were deadlocked.⁹⁴ It was not until 2014 that Sushil Koirala, the leader of the Nepalese Congress and elected as prime minister, provided some hope for Nepal to move forward.⁹⁵ Meanwhile, the interim government continues to operate by focusing on establishing a constitution and mitigating political disputes among parties.

Similar to India, the Nepalese government has undergone many organizational changes; however, Nepal's transition has not been as smooth as India's. While India is now a functioning democracy, Nepal has yet to establish a constitution and is struggling to put an end to political instability. The weak government makes Nepal less stable in both its domestic political and social relationships compared to India, which means it is unable to control its own populations or implement laws. Nepal's unstable government also impacts decisions and relations between the two countries. The next section discusses and demonstrates, through various examples, how disparity in the two nations'

⁹¹ Institute of Peace, "Nepal in Transition."

⁹² BBC News, "Nepal Calls Elections as Constitution Deadline Passes," last modified May 28, 2012, accessed September 3, 2012, <http://www.bbc.co.uk/news/world-asia-18230358>.

⁹³ BBC News, "Nepal Profile," last modified August 14, 2014, retrieved October 1, 2014, <http://www.bbc.com/news/world-south-asia-12499391>.

⁹⁴ Ibid.

⁹⁵ "Sushil Koirala wins vote to be Nepal's prime minister," last modified February 10, 2014, retrieved October 1, 2014, <http://www.bbc.com/news/world-asia-26116387>.

governments, where Nepal is unstable and India is stable, frequently creates friction and disagreement over border policy and political decisions.

B. MAJOR SOCIAL AND POLITICAL CHANGES

1. Treaties

A series of treaties developed between India and Nepal, from 1816 to 1951, serve as the foundation for their modern relations. Having a strong understanding of these treaties is imperative to comprehending Chapter IV's analysis of current Nepalese-Indian border issues and policy. The treaties contextualize their concerns over the border and explain the dynamics of their relationship. Historically, Nepalese and Indian relations have focused on strategic military and economic interests. The treaties, which came about as a result of war and territorial disputes, offer evidence of this and continue to frame Indian-Nepalese relations. As previously mentioned, the 1816 Treaty of Sugali is the first notable treaty that the East India Company and the Monarchy of Nepal signed. The treaty ended the Anglo-Gorkha War.⁹⁶ The treaty established an open border to allow the British-run Indian Army to recruit from the Nepalese population and promised the restoration of lands to Nepal. Essentially, the 1816 treaty provided the framework for keeping an open border. While it gave India a military strategic advantage and access to new military recruits, it benefited both countries economically by increasing trade across the open border and ended a senseless, bloody war.

By December 1816, the East India Company and the Nepalese monarchy amended the treaty to “restore to Nepal, the Tarai lowlands from Koshi to the Rapti River.”⁹⁷ The return of the Tarai lowlands marked a huge territorial gain for the Nepalese monarchy. Ownership of the Koshi and Rapti Rivers had been contested between India and Nepal prior to the war, due to its valuable natural resources and geographical

⁹⁶ Buddhi N. Shrestha, “The Natural Environment and Shifting Borders of Nepal,” accessed April 22, 2014, http://src-h.slav.hokudai.ac.jp/publicn/eurasia_border_review/Vol42/V4N204Shrestha2.pdf.

⁹⁷ Ibid.

location.⁹⁸ The treaty resulted in the delimitation and delineation of the Nepalese-Indian border. The countries had not clearly defined the area, but, over time, began to use markers, such as border pillars, to separate the Tarai forest areas. The population increased in certain regions due to expanding village areas, which made defining the territory more important. Consequently, recognizing and respecting authority and the marked territories of their cross-border neighbors helped to further define the border, which helped sustain healthy relations.

Although the 1816 treaty restored the lowlands in these regions, it was not until the 1860 peace treaty between India and Nepal that Nepal received the remaining Western Tarai lands.⁹⁹ Nepal and British-administered India enacted the treaty after surveying the border region and reaching a mutual agreement on what territory belonged to each country. The present-day borders were established at this time.¹⁰⁰ In addition to marking the territories between the two countries, the 1860 treaty allowed outsiders (foreigners) to purchase land for the first time. With the opening of the Tarai lands, Nepal's Prime Minister Jung Bahadur saw the importance of developing the newly returned region. As a result, the Prime Minister encouraged many Indian businessmen, traders, and landlords to purchase land in Tarai. With the migration of new immigrants to the Tarai, they established new businesses and created a melting pot of Indian and Nepalese culture in the region.¹⁰¹ The treaty, along with the British government's guidance, allowed the Nepalese-Indian border to remain open, allowing goods from India to move freely through Nepal. Thus, the open border stabilized a long-standing economic relationship between Nepal and India that still exists today.

⁹⁸ Bernardo Michael, "The Tarai: A Part of Moghlan or Gorkha? Perspective From the Time of the Anglo-Gorkha War (1814-1816)," Accessed August 12, 2014, 1-4, http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1848&context=himalaya&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26q%3D1814-1816%2BAnglo%2BGorkha%2BWar%26btnG%3D%26as_sdt%3D1%252C5%26as_sdt%3D#search=%221814-1816%20Anglo%20Gorkha%20War%22.

⁹⁹ Ibid.

¹⁰⁰ Gyanendra Paudyal, "Border Dispute Between Nepal and India," Tribhuvan University, July-December 2013, accessed August 16, 2014, 2-6, <http://www.nepjol.info/index.php/RESEARCHER/article/view/9884>.

¹⁰¹ Kansakar, "Nepal-India Open Border," 8-9.

The next significant treaty between Nepal and British-run India is the Treaty of Friendship and Peace, signed on December 21, 1923. In this treaty, Britain and India formally recognized Nepal as an independent country. Nepal earned their independence due to the Nepalese who enlisted in the British-run Indian military during both world wars.¹⁰² The formal recognition of Nepal's independence was a huge stepping-stone for the Nepalese. With their newfound independence, the Nepalese government took the opportunity to develop agriculturally and industrially, specifically in the Tarai.¹⁰³ The move towards industrialization helped generate employment and attracted many skilled workers from India.¹⁰⁴ Thus, the treaty and open border benefited both countries. It provided employment opportunities for Indians and with the influx of Indian labor, Nepal was able to successfully produce industrial goods (rice, cotton, textiles, etc.), which was an economic benefit. At the same time, the Nepalese were able to find employment opportunities in India.

The last treaty discussed in this thesis is the 1951 Treaty of Peace and Friendship. This treaty established the current border practices of India and Nepal, marking the most significant turning point in their relationship. It specifically addressed issues pertaining to residence, ownership of property, and trade and commerce between Nepal and India.¹⁰⁵ The items and terms that the 1951 treaty discussed created an open border policy and defined the special bond between India and Nepal.¹⁰⁶ The treaty stated that "Nepalese and Indians can travel and work across the border and are to be treated at par with the native citizens."¹⁰⁷ Both governments' concern for border security created a stronger bond between the two countries. The blended nature of their interactions and relations was apparent in everyday activities, as Indians began to buy land, participate in trade, and

¹⁰² Michael, "The Tarai," 1–4.

¹⁰³ Kansakar, "Nepal-India Open Border," 10–11.

¹⁰⁴ Michael, "The Tarai," 1–4.

¹⁰⁵ Kansakar, "Nepal-India Open Border," 10–11.

¹⁰⁶ Rabindra Mishra, "India's Role in Nepal's Maoist Insurgency," *Asian Survey* 44, no. 5 (September/October 2004): 627–646, accessed August 24, 2014, <http://www.jstor.org/stable/pdfplus/10.1525/as.2004.44.5.627.pdf?acceptTC=true&jpdConfirm=true>.

¹⁰⁷ Raju Bhattra, "Open Borders, Closed Citizenships: Nepali Labor Migrants in Delhi," accessed June 1, 2014, 1, <http://www.mtnforum.org/sites/default/files/publication/files/1139.pdf>.

engage in business transactions.¹⁰⁸ Consequently, the treaty allowed Indians to emigrate to Nepal and vice versa. The presence of Indian immigrants in Nepal provided an economic advantage by having additional laborers to contribute businesses and employment opportunities for the Indians.

Additionally, the treaty reemphasized a strategic and security relationship between India and Nepal. By 1951, both countries shared security against threats such as incoming refugees and illegal immigrants. Both militaries initiated joint exercises where they practiced minor border security procedures and shared intelligence reports of suspicious activities.¹⁰⁹ The treaty also helped establish a formal training program in India for the Nepalese Army.¹¹⁰ India's influence on Nepal's military and politics is evident, even in their present-day relationship.¹¹¹ As they continued to work together, the fact that India was a democracy and Nepal was a monarchy made decisions and practices difficult at times. Consequently, Nepal realized that India's established democracy offered more incentives for making policy decisions than Nepal had, given that it suffers from many internal political disputes related to its inability to establish a functioning democracy. The issue of transitioning from a monarchy to a true democracy was especially evident in the Panchayat period. Nepal's internal disputes also influenced how India and Nepal currently manage the border.

2. Panchayat Period

The Panchayat period was a political system that involved self-government or an assembly system and lasted from 1960–1990.¹¹² It is important in that it shows Nepal's internal struggle with political governance. Its weak government has often caused Nepal to rely on the strong Indian government for political guidance. The literature has

¹⁰⁸ Kansakar, "Nepal-India Open Border," 10–12.

¹⁰⁹ Padmaja Murthy, "India and Nepal: Security and economic dimensions," *Strategic Analysis*, 23, no. 9, (1999): 1531–1547, DOI: 10.1080/09700169908455141.

¹¹⁰ Ibid.

¹¹¹ Mishra, "India's Role in Nepal's Maoist Insurgency," 627–646.

¹¹² Upendra Baxi and Marc Galanter, "Panchayat Justice: An Indian Experiment in Legal Access," *Access to Justice*, no. 3 (1979), accessed August 18, 2014, <http://marcgalanter.net/Documents/papers/scannedpdf/panchayatjustice.pdf>.

considered this an experimental political period in Nepal, as it enabled the monarchy to incorporate the demands of the people, but still kept a traditional monarch as ruler.¹¹³ The Panchayat system/period was, in a sense, an experimental political strategy in which the standards of the monarchy combined with other elements from different political systems.¹¹⁴ Panchayat translates to “coming together of five persons,” essentially referring to a political body, such as a council, to determine policy.¹¹⁵ In the Hindu political system, the Panchayat is responsible for disputes, points of law, etc., and, according to Nepal expert, Narayan Khadka it is based on “these traditional borrowings, they were used to model the organizational concepts necessary for designing the structure of the panchayat system.”¹¹⁶ Nepal hoped these practices would help settle internal disputes without relying on the help of the Indian government. During this time, the ruling king (Mahendra) ensured that the king would still maintain political power in the Panchayat system. Conceptually, the Panchayat system had many basic elements of a democracy, where a political system represented the opinions of the people and included representatives from various villages; however, the representatives were not elected. Ideally, this political system would promote class-consciousness and protect class interest.¹¹⁷ From 1962 to 1981, however, the Panchayat system’s multiparty representation eventually evolved into a one-party system that failed to truly represent the people.¹¹⁸ The failure of the Panchayat period is an example of Nepal’s struggle to revamp their political structure without the help of the Indian government. This failure also provides evidence of how heavily Nepalese officials rely India for political guidance and social purposes.

¹¹³ Narayan Khadka, “Crisis in Nepal’s Partyless Panchayat System: The Case for More Democracy,” *Pacific Affairs*, 59, no. 3 (1986): 429–454, University of British Columbia, accessed August 8, 2014, <http://www.jstor.org/stable/2758328>.

¹¹⁴ Ibid.

¹¹⁵ Baxi and Galanter, “Panchayat Justice,” 32–38.

¹¹⁶ Khadka, “Crisis in Nepal’s Partyless Panchayat System,” *Pacific Affairs*, University of British Columbia, accessed August 8, 2014, 5, <http://www.jstor.org/stable/2758328>.

¹¹⁷ Khadka, “Crisis in Nepal’s Partyless Panchayat System,” 7.

¹¹⁸ Ibid., 9.

3. India-Nepal: Points of Tension

Between 1985 and 1990, several points of tension began to develop between the two nations that eventually undermined the treaties. The Nepalese monarchy unsuccessfully attempted to initiate a resettlement process back to Nepal for Nepalese refugees who settled in other parts of South Asia, including India. According to Dr. Vidya Bir Singh Kansakar, “the government could not meet the demand of the people aspiring for land under resettlement program . . . resulting in a large migration of laborers from India waiting for Nepalese citizenship.”¹¹⁹ As a result, Nepal underwent major land reform, which caused tensions in Nepalese-Indian trade relations.¹²⁰ By 1987, under the Panchayat system, Nepal required Indian workers in Nepal to have work permits, dismissing the 1951 treaty’s terms for improved trade and commerce. At the same time, Chinese goods became more prevalent in Nepal due to their low costs compared to Indian goods. The new work permit requirement for Indian workers and the low volume of Indian trade in Nepal angered the Indian government, which ultimately caused tensions between India and Nepal by the end of 1989.¹²¹

The Indian government viewed Nepal’s enforcement of work permits for Indians and their declining trade as dishonoring the terms of the 1951 peace treaty. According to Kansakar, as a result, “India refused to renew two separate Treaties of Trade and Transit and insisted on a single treaty addressing the two issues, however, the treaties were not acceptable to Nepal.”¹²² As part of the new negotiations, India forbade Nepal from entering into any other military alliances, obligated Nepal to consult with India when importing or moving military weapons and units from other countries, and demanded access to Nepal’s growing industries.¹²³ Understandably, Nepal could not accept India’s

¹¹⁹ Kansakar, “Nepal-India Open Border,” 12.

¹²⁰ Library of Congress, Country Studies, “Nepal: The Panchayat System Under King Mahendra,” accessed May 14, 2014, <http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field%28DOCID+np0030%29>.

¹²¹ Sangeeta Thapliyal, “Crisis of Democracy in Nepal,” *IDSIA*, accessed May 16, 2014, <http://www.idsa-india.org/an-jul-6.html>.

¹²² Khadka, “Crisis in Nepal’s Partyless Panchayat System,” 9.

¹²³ Rabindra Mishra, “India’s Role in Nepal’s Maoist Insurgency,” *Asian Survey*, 44, no. 5 (September/October 2004): 627–646, accessed October 12, 2014, <http://www.jstor.org/stable/pdfplus/10.1525/as.2004.44.5.627.pdf?acceptTC=true&jpdConfirm=true>.

terms; if they had, then they would essentially be giving up their sovereignty for the sake of improving their day-to-day trade operations.

While India and Nepal debated these issues, any existing trading treaties expired and all trade and transit of consumer goods and fuels from India to Nepal ended abruptly. Kansakar states that “India shut down 19 out of 21 trade routes and 13 out of the 15 transit routes through India used by Nepal.”¹²⁴ The border was no longer open for Nepalese and Indians to cross for business or personal reasons. As a result, Nepal’s dependency on India became very apparent to Nepalese workers, as industries’ workflow began to dwindle.¹²⁵ As Nepal struggled to maintain order, India continued to function in their daily operations, sustaining economic and political stability. The Nepalese government tried to avoid rekindling relations with India by asking other countries for foreign aid.¹²⁶ Nepalese locals, however, wanted to mend ties with India in the interests of a long-term, rather than short-term, foreign-aid solution. By 1990, new, local tensions ended the Panchayat period and a new, interim government, under Prime Minister Krishna Prasad Bhattarai, worked on reforming and opening trade between India and Nepal. The new, interim government consisted of members from the Nepalese Congress and the Communist Party of Nepal-United Marxist-Leninist (CPN-UML).¹²⁷

C. SOCIAL AND POLITICAL CHALLENGES

1. Threat to Current Relations–Social Conflict

Having a basic understanding of the threat perceptions that influence Nepalese-Indian relations is important in order to understand the current border policy. One of these threats is the activity of the Nepalese Maoists. This organization has stated that their main objective is ending the “unequal” treaties with India. Specifically, they cite treaties that encourage the open border and friendly relations, which essentially have been the framework for the Nepalese-Indian open border. They have stated that Nepal must cut ties with India to be a truly independent and self-functioning state, and that

¹²⁴ Mishra, “Nepal’s Maoist Insurgency,” 631.

¹²⁵ Khadka, “Crisis in Nepal’s Partyless Panchayat System,” 9.

¹²⁶ Thapliyal, “Crisis of Democracy in Nepal,” 15.

¹²⁷ Ibid.

terminating the treaties will end the virtual control of the Nepalese economy by Indian businesses.¹²⁸ Maoists and their followers could potentially threaten Indian-Nepalese relations if they continue to insist on ending the treaties. The Maoists have a very strong base in the western and midwestern regions of Nepal and are partially robust in the eastern region. The majority of Maoist support comes from rural regions. Maoists operate, to varying degrees, in 68 of the 75 districts that comprise Nepal and their use of propaganda can be effective in changing the mentality of Nepalese citizens. What they are promoting, however, can bring about social and economic disaster in the international community if Nepal refuses to have any relations with India.

For its part, India claims that the Maoist propaganda and violence in Nepal are spilling over into India, affecting “red corridor” a region where there is high Naxalite-Maoist insurgency. Nepalese politicians from the Maoist Party, however, claim to have no association with the activities of the Maoists in India (also known as Naxalites) that are causing chaos in rural parts of India,¹²⁹ which causes tension between the countries and disrupts border relations. In 2005, Nepal had debated using military forces to suppress Maoist insurgents, hoping to prevent the need to close the open border.¹³⁰ Given that both India and Nepal have neither the manpower nor the financial capabilities to actually enact a more focused military effort against Maoist insurgents and associated border issues, the second solution of ending relations with India has seemed like a quick fix to Nepalese and Indian politicians. In reality, closing the border would not end Maoist activity and Nepal would suffer economically, socially, and militarily. The eventual compromise was to have Maoists join the Nepal government in 2008. In 2011, the Nepalese Parliament elected the Maoist Party’s Baburam Battari as prime minister.¹³¹ Despite the Maoists being part of the government, there is still growing tension between the political parties. According to political analyst Ramesh Sunam and Keshab Goutam in 2012, the

¹²⁸ Surya Subedi, “India, Nepal and the Maoist Conflict: A Nepalese Perspective,” *Liberal Democracy Nepal Bulletin*, 1, no. 1 (2005): 1–8, <http://repository.unm.edu/bitstream/handle/1928/419/India-Nepal-Maoism.pdf?sequence=1>.

¹²⁹ Pushpa Kamal Dahal Prachanda interview: Full transcript, February 6, 2013, BBC News, http://news.bbc.co.uk/2/hi/south_asia/4707482.stm.

¹³⁰ Subedi, “India, Nepal and the Maoist Conflict.” 5–8.

¹³¹ “Nepal Profile,” BBC, August 14, 2014, <http://www.bbc.com/news/world-south-asia-12499391>.

party split into “a large ‘establishment’ group supporting multi-party democratic politics, and a small ‘dissident’ group embracing radical politics using violence in pursuit of a ‘people’s democracy.’”¹³² Maoist politician Mohan Vaidya Kiran, along with several other senior leaders, formed the Nepal Communist Party due to differences in the vision for Nepal’s future.¹³³ In addition to internal conflict, other Nepal politicians and citizens still have animosity towards the Maoists over the people’s war because the Maoists are associated with the loss of 16,000 lives and for disrupting the country’s economic development.¹³⁴ Despite their dissociation with the Maoist activity in India, people are still suspicious overall of the Maoists’ intentions and fearful for the future of Nepalese-Indian relations.¹³⁵

2. Nepal and China Border Security

As Section 1 on potential threats described, Nepal’s relationship with China is a potential concern for India. Nepal’s activities with China can impact Nepal’s need for Indian trade and military weapons. India is also apprehensive about the potential for China to use Nepal as a transit country, leading China to dump its products in Indian territory, as well become one of the Chinese pearls on the Indian border, along with Pakistan.¹³⁶ The long-standing history of Nepalese-Indian relations and their shared open border, coupled with Nepal’s previous Panchayat period experience, which demonstrated Nepal’s dependency on India, however, has made India a natural ally and trading partner. In contrast to India, Nepal’s closed border with China requires checkpoints and documentation. As described by Nepal expert Hari Bansh Jha, “Nepal’s border with the Tibet regions of China measures 1,415 kilometers along the Himalayan range.”¹³⁷ In

¹³² Ramesh Sunam and Keshab Goutam, “The rise of Maoists in Nepali politics: from ‘people’s war’ to democratic politics,” March 15, 2013, <http://www.eastasiaforum.org/2013/03/15/the-rise-of-maoists-in-nepali-politics-from-peoples-war-to-democratic-politics/>.

¹³³ Prashant Jha, “Nepal’s Maoists split; Kiran faction walks away,” *The Hindu*, June 19, 2012, accessed October 13, 2014, <http://www.thehindu.com/news/international/nepals-maoists-split-kiran-faction-walks-away/article3544011.ece>.

¹³⁴ Sunam and Goutam, “The Rise of Maoists.”

¹³⁵ “Prachanda interview.”

¹³⁶ Hari Bansh Jha, “Nepal’s Border Relations with India and China,” 2012, 65, http://src-h.slav.hokudai.ac.jp/publictn/eurasia_border_review/Vol41/V4N104J.pdf.

¹³⁷ Ibid., 72.

addition, Jha states that “the geographical situation of the Nepal-India border is different from that of Nepal and China.”¹³⁸ While natural elements distinguish the border, differences between the views and relations between China and Nepal create a cultural and political divide. Unlike Nepal and India, in which the border communities share similarities, those of China and Nepal do not necessarily have opportunities to interact and share in daily, face-to-face relations. Historically, China does not have populated regions along its border with Nepal, thus preventing migrations.¹³⁹

While Nepal and India focused their treaties and border policies on opening the border, China and Nepal made an effort to have diplomatic relations with respect to their closed border for the first time in 1955.¹⁴⁰ By 1956, China and Nepal established strict visa regulations for individuals passing between their two countries.¹⁴¹ Despite the regulated border policy, both countries encouraged border inhabitants to maintain traditional trade and expected them to register at border checkpoints. By 1960, however, China and Nepal were engaged in conflicts over their common border.¹⁴² Issues of territorial ownership became a constant source of contention, and according to economist Hari Bansh Jha, “at one point . . . Nepal even denied Chinese claim over Mount Everest.”¹⁴³ Nepal, with pressure from India, enforced military patrols along the closed border and China acted in a similar fashion. Both countries could feel tensions growing, causing the international community to worry about what might result from these territorial disputes. By the late 1960s, in an attempt to resolve these issues, both countries agreed to demilitarize 20 kilometers on both sides of the border in order to limit tensions and to reduce military costs.¹⁴⁴ With less border security, informal trading practices have increased between Nepal and China. The expanded trade, mixed with little oversight, has

¹³⁸ Shrestha, *Border Management of Nepal*, 63.

¹³⁹ Jha, “Nepal’s Border Relations,” 64.

¹⁴⁰ *Ibid.*, 72.

¹⁴¹ *Ibid.*

¹⁴² M. Taylor Fravel, “Regime Insecurity and International Cooperation: Explaining China’s Compromises in Territorial Disputes,” *International Security*, 30, no. 2 (Fall 2005): 46–83, accessed November 13, 2014, <http://www.mitpressjournals.org/doi/pdf/10.1162/016228805775124534>.

¹⁴³ Jha, “Nepal’s Border Relations,” 72.

¹⁴⁴ *Ibid.*, 72, 73.

caused security concerns regarding the Nepalese-Chinese border. Specifically, trading between the Kathmandu and Tatopani routes has become extremely challenging; traders have experienced extortion and damage to goods from robbers and criminal organizations along the border.¹⁴⁵ India is concerned that criminal activity along the Nepalese-Chinese border will inevitably spill over into India if Nepal and China cannot contain their border issues.¹⁴⁶

Despite the closed border with China and the open border with India, both borders experience similar crime and demarcation issues. The difference in how Nepal handles these border-related issues with China and India and how nonstate actors impact security is a function of the existing relationship between them. While India and Nepal share similarities and cultural understanding, China and Nepal do not have that historically developed bond and, therefore, appear to have less incentive to respect each other's boundaries. The tension between the Nepal and China over their closed border policy is apparent. Nepal cannot afford to have tensions with China impact their relationship with India, as it could result in closing the shared, open border between India and Nepal.

3. Impact of Weak Political Structures

While Nepal has experienced many social and political changes, this thesis is most concerned with the impact and importance of the previously mentioned People's War and the removal of the royal family (monarchy) from power as the most significant starting points for Nepal's political change. As stated earlier in Chapter I, Section C, Nepal and India differ with respect to the stability of their governments. India is a functioning democracy, while Nepal is working to formalize a stable government. With the outbreak of war and change in political rule, the Nepalese locals increasingly want to have rights and representation for various social and political groups.¹⁴⁷ Nepalese lesser groups, such as women, children, and religious groups (Buddhists and Muslims), have

¹⁴⁵ Jha, "Nepal's Border Relations," 72.

¹⁴⁶ Fravel, "Regime Insecurity and International Cooperation," 46–83.

¹⁴⁷ Mount Holyoke, "Maoist Insurgency and Changes It Brought in Nepalese Politics," accessed January 7, 2014, <http://www.mtholyoke.edu/~shres20e/classweb/worldpolitics/5%20page.html>.

also been actively seeking a voice in the government;¹⁴⁸ however, with an unstable government, it is difficult to address these concerns in an efficient manner. Various minority groups frequently stage protests in Nepal as a means to acquire government representation.¹⁴⁹ These protests often shut down stores and block street access, which impacts business production. This, in turn, has slowed the production of goods and trade, thus affecting relations with India.¹⁵⁰

At the opposite end of the spectrum, while India has a well-established democracy, it experiences similar social and political issues. For example, Nepalese Maoist activities have spilled over into India, which caused the Indian government to be more concerned with terrorist activity. Additionally, a large portion of the population suffers from extreme poverty, and women's rights in India remain an issue.¹⁵¹ Similar to Nepal, the Indian government's lack of support in response to the Maoists, its inability to reduce poverty, and lack of improvement of minority groups' social situations has resulted in growing animosity between the people and the government. As a result, protests have also occurred in India, which has witnessed attacks on government officials and police forces.¹⁵² India, however, has been able to mitigate the violence because of their stable government structure.

Lastly, the weak political structures make it difficult to uphold the terms of treaties. Although the treaties document an open border relationship and define territories between Nepal and India, Kansakar argues that, "none of the treaties between Nepal and India ever mentions the procedures for the regulation of the Nepal-India border."¹⁵³ The lack of strong political structures and other social concerns makes it harder for Nepal to monitor its borders properly. The two countries seem to function based on tradition and

¹⁴⁸ June Chua, "Nepal's Social, Political Changes Captured in Photographs." *Rabble CA*, November 27, 2013, accessed October 30, 2014, <http://rabble.ca/columnists/2013/11/nepals-social-political-changes-captured-photographs>.

¹⁴⁹ Mahendra Lawoti, *Contentious Political and Democratization in Nepal* (Sage Publication: Kathmandu, 2007), 48–52.

¹⁵⁰ Mount Holyoke, "Maoist Insurgency and Changes."

¹⁵¹ Raka Ray, *Fields of Protest: Women's Movement in India* (University of Minnesota Press: Minneapolis, 1999), 13–17.

¹⁵² Ibid., 20–25.

¹⁵³ Kansakar, "Nepal-India Open Border," 11.

shared history, rather than on an effective, easily referenced, open border policy. For instance, although India and Nepal have agreed on 22 transits for goods, they do not have an agreement on a specific route for the movement of people.¹⁵⁴

Although traditional practices appeared to have worked in the past, both India and Nepal acknowledge a potential problem exists with increased crime and illegal activities, given the lack of effective border monitoring. Due to these vulnerabilities in the open border policy and lack of management Kansakar states that , “it is alleged that it is possible to have illegal movement of people and goods in collaboration with personnel disputes in those posts. There is no denying the fact that it is not unusual from the practical point of view to have illegal smuggling of goods, trafficking of girls to brothels in Indian cities, trafficking in narcotic drugs, arms and ammunition and movement of criminals and terrorists.”¹⁵⁵

Despite the illegal activities and tensions that have occurred along the open border, however, maintaining an open border policy is important to both countries, but for different reasons.

As this chapter previously discussed, India is a well-established functioning country that has a stronger and larger military than Nepal. Based on the treaties, the open border has allowed Nepal to have access to India’s military capabilities and training. Having such military security is an incentive for Nepal to desire an open border; without it, their military would falter. Due to the open border, India has been able to take advantage of trade and resettlement in Nepal, boosting the Indian economy. Given the historical treaties and the evolution of both governments, the open border has been more beneficial at maintaining a relationship between the two countries. To better analyze the current border practices, the next chapter evaluates two case studies: Polish-German relations and U.S.-Mexican relations. Using these two case studies, and comparing them to the current relations of Nepal and India, allows for the identification of vulnerabilities and practical solutions.

¹⁵⁴ Kansakar, “Nepal-India Open Border, 11–12.

¹⁵⁵ Ibid., 11.

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III. LESSONS OF OPEN VERSUS RESTRICTED BORDERS: CASE STUDIES

Whether it is open or restricted, border policy is enforced for the purposes of security and trade regulation in the international community. This chapter focuses on the U.S.-Mexican border as an example of a restricted border policy and the Polish-German border as example of an open border policy. These case studies illustrate different methods by which states implement policies to counter threats to their territorial sovereignty, and were selected for this thesis number of reasons. First, these cases study nonstate actors—criminal organizations, laborers, and traders—that influence state relations, border policy. These are the same nonstate actors influencing Nepalese-Indian border policy. The border situation between the United States and Mexico will help illustrate that a restricted border policy would not work for Nepal and India, while the case study of Poland and Germany will help demonstrate why maintaining an open border policy benefits Nepal and India. Examining these various approaches of implementing border protection institutions will help formulate recommendations for better national security strategies, border practices, and preventive measures for the Nepalese-Indian border.¹⁵⁶

A. U.S. AND MEXICAN BORDER POLICIES

The U.S.-Mexican border has often undergone border policy reorganization due to war, popular sentiment, and Congressional legislation. For example, the outbreak of the Mexican Revolution in November 1910 prompted the United States to establish numerous forts along the border in order to prevent turmoil in Mexico from spilling over to the United States.¹⁵⁷ In 1924, anti-immigration sentiment swept through U.S. politics causing the government to enforce laws that prevented Mexicans from crossing over

¹⁵⁶ Dashdavva Dashtseren, “Border Protection and National Security of Mongolia” (Thesis, Naval Postgraduate School, September 2006), 52–56.

¹⁵⁷ Tony Payan, *The Three U.S.-Mexico Border Wars: Drugs, Immigration, and Homeland Security*, (Santa Barbara: Praeger, June 30, 2006), 8–9.

freely.¹⁵⁸ The sudden halt of free cross-border movement caused tension and animosity between the United States and Mexico, and marked a major division in American public opinion towards immigration policy. A series of major events, and shifts in circumstance caused by the First and Second World Wars, exacerbated the rift between the United States and Mexico.¹⁵⁹ The two world wars established the United States as a growing world power and helped drive domestic economic growth and production. Meanwhile, Mexico was still struggling to recover from the effects of its revolution.¹⁶⁰ Although United States remained involved in Mexican politics by virtue of the many American business interests in Mexico, domestically the country sought to protect its borders. The increasing economic disparities began to deepen the divide between the two neighboring countries. These events help give background to the action taken by the American government post-9/11.

This particular border is exemplary of political, cultural, and security disputes over border policy. California, Arizona, New Mexico, and Texas make up the southern U.S. border with Mexico. In this case study, these states will be the primary examples for statistics applied to a broader, national analysis of border security issues, although there are other states that are affected by the U.S.-Mexican border. Prior to 9/11, the primary focus for securing the U.S.-Mexican border was to prevent illegal immigration, drug trafficking, and human trafficking.¹⁶¹ For U.S. policy makers, preventing illegal immigration was the most effective way to control nonstate actors, such as criminal organizations. The events of 9/11, however, marked another turning point in U.S.-Mexican border relations. The United States faced new challenges, such as domestic terrorism, and new ways of strengthening the border. According to a CRS report by Chad C. Haddal, The United States has faced “enormous political pressure to stop illegal

¹⁵⁸ Payan, *The Three U.S. –Mexico Border Wars*, 9–10.

¹⁵⁹ Ibid., 9.

¹⁶⁰ Ibid., 9–10.

¹⁶¹ Chad C. Haddal, “Border Security: The Role of the U.S. Border Patrol,” August 11, 2010, Congressional Research Service, Department of Homeland Security, Bureau of Customs and Border Protection, accessed August 28, 2014, <http://www.fas.org/sgp/crs/homesecc/RL32562.pdf>.

immigration . . . to prevent the entry of potential terrorists.”¹⁶² These challenges were met with various responses, depending on the President. The policies of President Barack Obama, versus those of the preceding Bush Administration, were very distinct in regards to addressing border security issues. Consequently, the U.S. government has invested resources (manpower and funds) to secure points of entry. Despite efforts to strengthen the border, the United States has continued to face issues of criminality (caused by drug cartels), illegal migration, and political tensions. These lingering issues contradict that a restricted border is effective in eliminating security concerns.

This struggle of addressing security concerns is applicable to Nepal and India, as both nations are also dealing with criminal issues that will be discussed in greater detail in Chapter IV. In addition, Nepal is dealing with changes in political leadership, which is impacting its relations with India, thus causing concerns over how border issues will be addressed. The consequences—funding issues, political tension, security breaches, strained relations with border community—that the United States and Mexico have had to deal with in maintaining a restricted border between different administrations is not a price that Nepal or India can afford, as will be discussed in Section IV.

1. U.S. Administration: U.S. and Mexican Border Security

In this section, the border policies and priorities of the Bush and Obama Administrations will be used to demonstrate how rash and inconsistent political efforts threaten border relations and can increase security threats. In Section IV, this scenario will help depict the border concerns for Nepal, given the country’s current political instability. The actions of these administrations will also help provide recommendations in employing proper border security protocol for Nepal and India’s cross-border crime problems.

Immediately after 9/11, the Bush Administration sought to tighten border security procedures to prevent terrorists from penetrating U.S. borders. For a short period, the

¹⁶² Rey Koslowski, “The Evolution of Border Controls as a Mechanism to Prevent Illegal Immigration,” Migration Policy Institute, February 2011, 1.

border remained completely closed.¹⁶³ The need to act quickly was a tactic to bring calm to border communities and to the American people. Consequently, the DHS was developed under the Bush Administration, to focus on border security policies and procedures. DHS integrated previously independent agencies that managed transportation, immigration, and border security/patrol.¹⁶⁴ The DHS organizational chart is displayed in Figure 2.



Figure 2. Department of Homeland Security Chart.¹⁶⁵

Under the Bush Administration, the United States heavily focused its resources on the southern border, since the movement of people and goods (legal and illegal) were extremely high compared to other border areas.¹⁶⁶ As stated by U.S.-Mexican border

¹⁶³ Payan, *The Three U.S.-Mexico Border Wars*, 13.

¹⁶⁴ Koslowski, "The Evolution of Border Controls," 4.

¹⁶⁵ U.S. Department of Homeland Security, Organizational Chart, accessed September 2014, <http://www.netage.com/economics/gov/USHomeland-chart-top.html>.

¹⁶⁶ Koslowski, "The Evolution of Border Controls," 1–2.

expert, Rey Koslowski, “Efforts to prevent entries at unauthorized locations have focused primarily on the U.S.-Mexico land border, where the overwhelming majority of unauthorized entries occur.”¹⁶⁷ Intelligence officials reported that gaps along the southern border could provide a gateway to the United States for potential terrorists.¹⁶⁸ The United States made efforts to create physical barriers, legal barriers, and cultural barriers; thus creating an “us” versus “them” mentality.

The Bush Administration focused heavily on illegal immigrants as a cause of U.S. domestic problems; however, the administration’s border security efforts caused more tension between the United States and Mexico and became a costly effort for the U.S. government.¹⁶⁹ Overall, the administration’s efforts did not have the desired effect and created more political concerns for U.S. officials. To Mexican officials, tightening of the southern border in response to terrorist attacks lacked any logical explanation because the issues of 9/11 were seen more as an intelligence failure rather than a border security issue. The United States’ actions furthered increased tensions between the two governments.¹⁷⁰ Former President Bush openly stated that his administration would harden the borders by “increasing worksite enforcement, deploying fences and advanced technologies to stop illegal crossings . . . have doubled the number of border patrol agents.”¹⁷¹ At the same time, the administration also openly acknowledged “that we will never fully secure our border until we create a lawful way for foreign workers to come here and support our economy We must also find a sensible and humane way to deal with people here illegally.”¹⁷² The administration’s efforts to secure the border occurred in such a way that Mexicans felt unwanted. Yet, at the same time the United States acknowledged that immigrants provided a much needed workforce to keep the U.S. economy thriving. This mixed message did not sit well with the Mexican

¹⁶⁷ Ibid., 1.

¹⁶⁸ Brent Jones, “Bush’s border fence to cost extra \$400 million,” *USA Today*, September 9, 2008, accessed November 1, 2014, http://usatoday30.usatoday.com/news/washington/2008-09-09-border-fence_N.htm

¹⁶⁹ Payan, *The Three U.S.-Mexico Border Wars*, 13.

¹⁷⁰ Ibid., 13–14.

¹⁷¹ George W. Bush, 2008 State of the Union Address to Congress, 2008, January 28, 2008, accessed September 10, 2014, http://www.ontheissues.org/SOTU_2008.htm

¹⁷² Bush, 2008 State of the Union.

government or with Mexican immigrants. Similarly, if the Nepalese and Indian governments were to create such a feeling there would be political outbursts and the lifeline for many of the border communities would be severed.¹⁷³

Additionally, former President Bush announced in his 2008 State of the Union address that the United States would invest in physical barriers as one of the preventive measures to hinder illegal immigrants from crossing. By 2010, the United States constructed a wall between Mexico and the United States. As explained by border expert Terry Goddard, initially, this wall was to keep out “drug cartels, violent gangs, an estimated 20 million illegal aliens, and even terrorists out of the country.”¹⁷⁴ The estimated cost of material and labor to build the 670-mile-long wall ended up being approximately \$400 million dollars.¹⁷⁵ In reality, it was a costly project that had little impact on illegal immigration. As stated by the secretary of Homeland Security, Janet Napolitano, “For every 50 foot wall, there is a 51 foot ladder.”¹⁷⁶ Creating a physical structure was not a realistic way to prevent people from crossing the border or to stop associated crime. For Nepal and India, such a costly effort would not be an action could they could afford, nor would it likely be effective, as proven by the United States-Mexico case.

When Barack Obama became president, the concept of border security was still a major national concern and a hot political topic for the U.S. and Mexican communities. However, there was a much stronger emphasis under the Obama Administration to focus on immigration reform and finding a cost-effective way of securing the border, instead of restricting border access and hardening the immigration process at whatever cost.

The Obama Administration’s first action towards border security was to fix the mistakes made by the previous administration. Since coming to power, the Obama Administration has focused much of its efforts on finding cost-effective ways of dealing

¹⁷³ Lok Raj Baral, “Realism Not Idealism Important In Nepal India Border,” July 25, 2014, *Spotlight News*, accessed October 21, 2014, <http://www.spotlightnepal.com/News/Article/Realism-Not-Idealism-Important-In-Nepal-India-Bord>.

¹⁷⁴ Goddard, “How to Fix a Broken Border,” 12.

¹⁷⁵ Jones, “Bush’s Border Fence.”

¹⁷⁶ Goddard, “How to Fix a Broken Border,” 12.

with border security issues. Border patrols are still numerous along the southern border, and the administration has invested in the proper tools—effective training, proper visa processing, immigrant database, and surveillance strategies—to implement effective border security.¹⁷⁷ Although under the Obama Administration, the focus on gaining the respect and approval of Hispanics in the United States was seen by many as a political move, it also created a better working relationship with the Mexican government in regards to handling immigration issues.¹⁷⁸

The Obama Administration also differs from the Bush Administration with its focus on the southern border as an issue of transnational crime, rather than a terrorist threat. The administrations differ in what they perceive as cross-border threats, how they contain threats, how they invest resources, and what their desired outcomes are regarding a restricted border. Bush sought to prevent any and every threat, while Obama chose to focus on one specific threat of criminal networks along the southern border without impacting immigration rights; making efforts more attainable. Both the Bush and Obama Administrations, however, saw a need to maintain a restricted border. Both administrations prioritized immigration control issues, border patrol costs, fighting criminal activity, and economic concerns while handling border policy. The following sections will explain each of these issues in depth and describe how they impact the southern border. This analysis is important because we can apply the same administrative strategy to Nepal and India's border concerns in order to prevent the same mistakes seen on the U.S.-Mexican border.

a. U.S. Border Patrol and U.S. Customs Policy: Protecting the Southern Border

There are many complex levels on how to handle migration issues between the United States and Mexico. The establishment of the DHS provided a new institution to address legal and illegal migration of people across U.S. borders. As shown in Figure 2,

¹⁷⁷ Barack Obama, "Continuing to Strengthen Border Security," White House, January 29, 2013, accessed September 8, 2014, <http://www.whitehouse.gov/issues/immigration/border-security>.

¹⁷⁸ Cindy Y. Rodriguez, "Latino Vote Key to Obama's re-election," CNN, November 9, 2012, accessed October 21, 2014, <http://www.cnn.com/2012/11/09/politics/latino-vote-key-election/>.

the DHS has many agencies that fall under their purview. One of the most important agencies involved in border security is the Customs and Border Protection (CBP) Bureau.¹⁷⁹ The CBP was established on March 1, 2003 and became the United States' first comprehensive border security agency.¹⁸⁰ Its mission is to protect the border with regard to trade, travel, and security.

Under the CBP, the United States Border Patrol (USBP) is the first line of defense along the 1,989-mile U.S.-Mexican border.¹⁸¹ As stated by border expert Rey Koslowski, its primary responsibility is to “detect an illegal entry; identify and classify the entry and determine the level of threat involved; respond to the entry; and bring the event to a satisfactory law enforcement resolution.”¹⁸² USBP serves as a vital tool for pursuing nation border security strategy and is a deterrent for people seeking illegal entry. Both the Bush and Obama Administrations relied on border patrols to maintain illegal immigration and mitigate criminal activity along the border. Over the last decade, the number of Border Patrol agents has tripled, with roughly 90% of USBP manpower and resources focused on the southern border.¹⁸³ This focus on the southern border is based on the estimated number of undocumented aliens that move in and out of the United States, which ranges from 10.8 million to 11.1 million people.¹⁸⁴

The Border Patrol continuously evolves in response to national security needs. As the nation's security needs have changed, the border patrol's resources and techniques have changed. Surveillance technologies have progressed in order to better secure the borders. Ground sensors, unmanned aerial vehicles (UAVs), cameras (i.e., infrared night-vision scopes and low-light television), helicopters, and all-terrain vehicles are the

¹⁷⁹ “U.S. Customs and Border Protection,” Department of Homeland Security, accessed September 12, 2014, <http://www.cbp.gov/>.

¹⁸⁰ Ibid.

¹⁸¹ Koslowski, “The Evolution of Border Controls,” 4.

¹⁸² Ibid.

¹⁸³ Blas Nunez-Neto, “Border Security: The Role of the U.S. Border Patrol,” November 20, 2008, Cornell University ILR School, accessed September 10, 2014, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1577&context=key_workplace.

¹⁸⁴ Koslowski, “The Evolution of Border Controls,” 4.

main technologies that the Border Patrol has used in monitoring moving targets.¹⁸⁵ In addition, the U.S. government has sanctioned military involvement for training and border observation to handle illegal border activities (e.g., human and drug trafficking)¹⁸⁶ According to border security expert Peter Andreas, “Although, prohibited from making arrests, military personnel do assist by operating night scopes, motion sensors, and communication equipment and also by building and maintaining roads and fences.”¹⁸⁷ The Border Patrol has adopted U.S. Navy technologies, such as the electronic finger-printing system Automated Biometric Identification System (IDENT), which they use as a tracking system when apprehending illegal immigrants attempting to cross the border.¹⁸⁸ While military involvement may be strategically acceptable to the U.S. government due to the events of 9/11, it has raised the level of tension and fear among border residents—even for border commuters who abide by the law.¹⁸⁹ The constant enforcement by U.S. officials to harden the border has caused a lack of understanding and miscommunication between them and the Mexican population. The American Civil Liberties Union has reported incidents involving Border Patrol officers that have acted on stereotypes and racism, which has led to racial profiling, wrongful arrest, and even the accidental death of individuals.¹⁹⁰

On the other side of the border, the Mexican government has not created a border security force to deal with border security issues, primarily because Mexico’s issues are more complicated because its security problems occur at the federal, state, and municipal levels. The functionality of the security/police force is either divided into a preventive function or a judicial function.¹⁹¹ Nearly half of the preventive police forces are linked with the military police, without a clear distinction in how they differ from the general

¹⁸⁵ Andreas, *Border Games*, 90.

¹⁸⁶ Ibid., 91.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Payan, *The Three U.S.-Mexico Border Wars*, 13–14.

¹⁹⁰ Chris Ricker, “Border Patrol Must Stop Hiding the Truth About Its Uses of Forces,” American Civil Liberties Union, October 4, 2012, <https://www.aclu.org/blog/immigrants-rights-racial-justice-criminal-law-reform/border-patrol-must-stop-hiding-truth-about>.

¹⁹¹ Phillip L. Reichel, *Comparative Criminal Justice Systems: A Topical Approach* (Upper Saddle River: Pearson Prentice Hall, 2008), 52–56.

military forces or the intelligence agencies.¹⁹² This leaves Mexico without a formal border security force with a clear mandate to protecting the territories between border points of entry. This has made it difficult for Mexico to accurately monitor any border issues from their side.

Mexico has no formalized paramilitary force or border security force. Instead, the Mexican military has been used to respond to the drug cartels and other criminal activity along the border. Under the regime of Mexican President Felipe Calderon, reports of human rights abuse and corrupt police officers received much criticism and distrust from the public and put political pressure on the administration.¹⁹³ Much of the corruption and dysfunction is not only due to a lack of clearly written guidelines and roles for the police force and military, but also due to the lack of training, equipment, and good leadership. The weaker the police force, the weaker the security. There is also the temptation to take quick money—bribes—in exchange for ignoring criminal activity. With such a reputation for corruption within the police force, trust and reliability between citizens and the government is nearly nonexistent.

The Mexican government under President Pena has suggested that an answer to the war on drugs and border issues is to have a paramilitary force.¹⁹⁴ The reason for this is that the military is not an optimal option for law enforcement functions, but since the police do not have the level of training or equipment necessary to do the job, the military has been needed to control criminal activity. A paramilitary force would provide the best of both worlds—a police function with military training. Interestingly, this has been suggested by the Nepalese government as a way to handle border issues as well.¹⁹⁵ This solution seems reasonable; however, due to the lack of funding and the political tension over the role of security forces involved, the approval of a formal paramilitary force would seem unlikely.

¹⁹² Ibid.

¹⁹³ STRATFOR Global Intelligence, “Mexico’s Plan to Create a Paramilitary,” updated April 19, 2012, accessed September 4, 2014, <http://www.stratfor.com/weekly/mexicos-plan-create-paramilitary-force>.

¹⁹⁴ STRATFOR, “Mexico’s Plan to Create a Paramilitary.”

¹⁹⁵ *Armed Police Force Act, 2058*, (n.d.), accessed October 1, 2014, http://www.ncf.org.np/upload/files/17_en_armed-police-force-act-2058-2001-e.pdf.

With Mexico struggling to establish a reliable security force amid growing political tensions with the United States over undocumented Mexicans living in the United States, policymakers are reevaluating threats to the U.S.-Mexican border, while trying to maintain proper relations. As the following sections will discuss the nonstate actors associated with the restricted border and their impact on U.S.-Mexican relations. The major nonstate actors that this research primarily focuses on are domestic criminal organizations, human and drug trafficking networks as related to the drug cartels, and laborers and trade relations in regards to the economy.

Focusing on these nonstate actors also gives insight into the reasons why India and Nepal are in flux about their border policies. The associated activities of criminal organizations and trafficking issues are raising security concerns for both India and Nepal, with both wondering if a restricted border is the best option. While the associated benefits of economic nonstate actors sway both countries to preserve the open border and deal with security issues. Analysis of U.S. and Mexican nonstate actors will explain policy makers' decisions to have a closed border policy and if the reasons could be at all applicable to the case of Nepal and India.

2. Crime

Politicians and protesters in the United States share the same view on the enforcement of a restricted border, which is that the rising number of illegal immigrants is correlated to rising U.S. crime rates.¹⁹⁶ Immigration analyst Jason Howerton gathered data on the number of illegal immigrants arrested for visa fraud/immigration violations, theft, assault, and driving under the influence (DUI) violations. He reported that “Illegal immigrants released from jail have committed crimes, including nearly 2,000 DUI, over 1,400 drug violations, and more than 1,000 major criminal offenses and violent crimes, which consist of murder, assault, battery, rape, kidnapping, child molestation, domestic

¹⁹⁶ Immigration Policy Center, “From Anecdotes to Evidence: Setting the records straight on Immigrants and Crime,” July 25, 2013, <http://www.immigrationpolicy.org/just-facts/anecdotes-evidence-setting-record-straight-immigrants-and-crime-0>.

abuse, lynching, stalking, and torture.”¹⁹⁷ These statistics are relatively small compared to the overall criminal population. The reality is that authorities most commonly arrest illegal immigrants for visa or immigration violations, a less serious offense. It is calculated that about 41% of illegal immigrants are “over stayers,” meaning they enter the country legally, but stay after their visas expire.¹⁹⁸ Consequently, the authorities put most illegal immigrants into deportation centers and send them back to their native country, where they attempt to illegally enter again. The border state that has the largest number of illegal residents is California. Los Angeles County has the highest number of undocumented residents (nearly 900,000) of any area in the state, followed by Orange County (nearly 300,000), San Diego County (close to 180,000), and Santa Clara County (more than 170,000).¹⁹⁹ As a result, in 2006, the Bush Administration made “efforts to prosecute illegal immigrants using unauthorized SSNs [social security numbers] (in order to hide their unlawful status from employers) by enlisting the help of local law enforcement in tracking down unauthorized immigrants in the U.S. interior.”²⁰⁰ Despite an increased effort to arrest undocumented residents, criminal rates have not significantly decreased, because while there is an artificial correction there is no causal linkage.

The fact that policy makers base much of the restricted border policy on preventing security risks, such as crime, seems a weak basis for border restriction; the reality is that these immigrants are only a small percentage (17% total) of crimes committed and those imprisoned.²⁰¹ Illegal immigrants are also five times less likely to be in prison compared to natural-born citizens.²⁰² According to data collected and analyzed by economists Kristin Butcher and Anne Morrison Piehl, the most plausible

¹⁹⁷ Jason Howerton, “Report: Illegal Aliens Released by Federal Gov’t Committed 19 Murders, 142 Sex Crimes,” July 31, 2012, <http://www.theblaze.com/stories/2012/07/31/report-illegal-aliens-released-by-federal-govt-committed-19-murders-142-sex-crimes/>.

¹⁹⁸ William F. McDonald, “Crime and Illegal Immigration: Emerging Local, State, and Federal Partnerships,” *National Institute of Justice Journal*, June 1997, accessed September 19, 2014, <https://www.ncjrs.gov/pdffiles/jr000232.pdf>.

¹⁹⁹ Laurel Hill and Joseph Hayes, “Just the Facts: Undocumented Immigrants,” February 2013, http://www.ppic.org/main/publication_show.asp?i=818.

²⁰⁰ Gordon Hanson, “The Economics and Policy of Illegal Immigration in the United States,” Migration Policy Institute, December 2009, 6.

²⁰¹ Immigration Policy Center, “From Anecdotes to Evidence.”

²⁰² Ibid.

reason is that many illegal immigrants will not commit crimes for fear of being deported.²⁰³ Several studies that have evaluated and tested whether or not immigration correlates to crime rates have proven that there are several other factors that impact crime, rather than illegal immigrants; thus proving that illegal Mexicans are not actively raising crime rates. Researchers Pia M. Orrenius and Roberto Coronado have studied the crime rates associated with immigration and stated that “current levels of enforcement and the extensiveness of human and drug smuggling are the most likely dynamics linking illegal immigration flows to border crime. There is no evidence linking immigrant residents—legal or illegal—to higher crime rates more generally.”²⁰⁴ Domestically, the presence of Mexican illegals is not a threat; however, data shows that organized criminal organizations, such as the cartels, are the real threat to border security. Thus, this shapes the restricted border policy, but there is a need to distinguish between the immigrants and criminal organizations. Such a lesson should be applicable to Nepalese-Indian border security because although there are criminal activities that have been blamed on free and open migration, an increased presence of immigrants does not necessarily mean higher crime rates, as proven in the case of the United States and Mexico.

3. Human and Drug Trafficking

Human and drug trafficking, which are run along the U.S.-Mexican border, are driven by the Mexican cartels. These cartels are a shared concern for U.S. and Mexican officials, and both governments have expressed a need to find a solution to end cartel activities.²⁰⁵ As this type of activity is driven by demand on both sides of the border, the enforcement of a restricted border seems like the most logical solution, as it helps mitigate some of the human and drug activity. Unfortunately, neither government has found a way to completely stop the illegal exchange of people and drugs. Many Mexicans seek help from the cartels to cross the border undetected in exchange for money or

²⁰³ Ibid.

²⁰⁴ Pia M. Orrenius and Roberto Coronado, “The Effect of Illegal Immigration and Border Enforcement on Crime Rates along the U.S.-Mexico Border,” December 2005, accessed September 22, 2014, 1–4. <http://ccis.ucsd.edu/wp-content/uploads/2012/07/wrkg131.pdf>.

²⁰⁵ Evelyn Krache Morris, “Think Again: Mexican Drug Cartels,” December 3, 2013, accessed September 23, 2014, http://www.foreignpolicy.com/articles/2013/12/03/think_again_mexican_drug_cartels.

services. Consequently, the smuggling of individuals is a growth industry for organized crime.²⁰⁶ Unfortunately, in such cases, these illegal immigrants often become victims and because of their illegal status, they fear going to authorities for help. Georgetown University sociology professor, William F. McDonald, states that criminal organizations, such as the cartels, “have robbed, raped, and killed them [illegal immigrants]; abandoned them in the desert; or forced them to work in sweatshops or prostitution rings to pay off the cost of the trip.”²⁰⁷ As a result, U.S. politicians fear that drug cartel activity will spill further into the United States.

Assumptions by authorities have led them to hypothesize that they can only control cartel activity at the border with additional funds and manpower.²⁰⁸ Drug cartels and human trafficking organizations feed frenzied enforcement and make securing the restricted, southern border very dangerous. As an example these cartels use scare tactics to ward off border officials by leaving dead bodies along the border to show what happens to those who cross them or threaten their drug operation.²⁰⁹ Cartel leaders, however, continue to run border activities as if they are a business.²¹⁰ According to U.S.-Mexican border relations expert, Terry Goddard, one of the misconceptions is that, “Politicians . . . fail to grasp that the cartels are not interested in power or violence for their own sake They will go to great lengths to protect their business interests, but they are opportunists, not terrorists.”²¹¹ In particular, this perspective was visible after 9/11, when the Bush Administration made it a priority to prevent *all* potential outside threats. Consequently, there was no distinction between actions taken to prevent terrorism and that of controlling criminals. The law treated all crimes and outsiders the same. Under the Bush Administration, manpower and technology substantially increased along the southern border. As stated earlier, the number of Border Patrol agents doubled in size

²⁰⁶ William F. McDonald, “Crime and Illegal Immigration: Emerging Local, State, and Federal Partnerships,” *National Institute of Justice Journal*, June 1997, accessed September 19, 2014, <https://www.ncjrs.gov/pdffiles/jr000232.pdf>.

²⁰⁷ Ibid.

²⁰⁸ Goddard, “How to Fix a Broken Border,” 2.

²⁰⁹ Andrea Canning, “U.S. Border Agents Seduced By Mexican Drug Cartels,” ABC News, September 22, 2011, <http://abcnews.go.com/US/corrupt-guard-offers-inside-mexican-drug-cartels/story?id=14519807>.

²¹⁰ Goddard, “How to Fix a Broken Border,” 3.

²¹¹ Goddard, “How to Fix a Broken Border,” 3.

and they used aircraft (including drones), portable ground radars, and x-ray machines for scanning and surveillance purposes. The intent was to strengthen the border and enforce immigration laws. The administration also expected that having such obvious mechanisms in place would deter criminals from even attempting to cross the border.

While this scenario may have been true for some illegal immigrants, it had a different impact on the cartels. Goddard states that “it created a robust and profitable market for more sophisticated smuggling—one that the cartels have been only too ready to enter.”²¹² Essentially, this means that as long there is a demand for drugs, there is a business for the cartels. Authorities are seemingly unable to protect the border with manpower or technology, as the cartels continue to find creative ways to run their business. Every system has weaknesses and the cartels are adept at exploiting any vulnerability.

While U.S. officials put more emphasis on restricting the border, the current Mexican President, Pena Nieto, has focused on reducing violent crime.²¹³ Goddard also says that “the government’s emphasis on prevention has been demonstrated by the creation of a national prevention program with a \$9 billion budget that includes socioeconomic, education, infrastructure, and drug treatment programs.”²¹⁴ Although the Mexican government has also invested a tremendous amount of money in securing the border, their approach differs from that of the United States. By focusing on and improving domestic programs, instead of dramatically trying to enforce a restricted border, the Mexican government has been able to reduce organized crime by 30%.²¹⁵ Mexico’s strategy for dealing with criminal organizations along the border has also improved U.S.-Mexican relations. Mexico’s strategy in handling organized crime would be more applicable to India and Nepal, as it could provide a reasonable solution to both countries without closing the border. Controlling border crime is an important step in improving foreign relations. Another strategy in improving foreign relation and policy

²¹² Ibid., 4.

²¹³ Clare Ribando Seelke, “Mexico: Background and U.S. Relations,” Congressional Research Service, January 30, 2014, 7, <http://fas.org/sgp/crs/row/R42917.pdf>.

²¹⁴ Ibid.

²¹⁵ Seelke, “Mexico: Background and U.S. Relations,” 7–8.

include the economy. How states interact with one another will impact the workforce and what types of goods and resources are exchanged. For each government it is important to meet the needs and demands of their consumer. This usually requires outside sources. The details of U.S.-Mexican economic relations are discussed in Section 4.

4. Economy

The U.S.-Mexican restricted border status impacts the economic situation in both countries. The specific nonstate actors that make up the economy in both Mexico and the United States include laborers and trading of manufactured goods. In the United States, some proponents of a restricted U.S. border argue that too many illegal immigrants are a tax issue, that businesses hire them illegally, that they increase poverty and homelessness, and that they encourage money laundering.²¹⁶ Although, the cartel money laundering is a serious issue, the reality is that, in general, illegal immigrants do not have a negative impact on the U.S. economy. According to the Congressional Budget Office (CBO) and the Migration Policy Institute, the resources used by the United States to control the southern border exceeds the amount of money spent on programs aiding undocumented immigrants and the taxes that they incur.²¹⁷ Gordon Hanson, a well-respected economist who writes for the Migration Policy Institute, contends that the majority of unauthorized immigrants work in low-skilled jobs, as the United States has increased its education levels among the U.S. adult population.²¹⁸ Industries such as agriculture, building cleaning and maintenance, and other low-skilled labor jobs, however, require less-educated workers and, therefore, rely on the illegal, low-skilled population.

Hanson argues that “immigrants, unauthorized immigrants in particular, have stepped in to provide a ready source of manpower.”²¹⁹ His statement suggests that although businesses may illegally hire immigrants, or immigrants may provide false documentation to get hired, immigrants are contributing to the workforce by providing a

²¹⁶ Hanson, “The Economics and Policy,” 5–10.

²¹⁷ Congressional Budget Office, “The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments,” Congressional Budget Office, December 2007, accessed October 22, 2014, <http://www.cbo.gov/sites/default/files/12-6-immigration.pdf>.

²¹⁸ Hanson, “The Economics and Policy,” 5.

²¹⁹ Ibid.

service that is going unfulfilled. Therefore, despite having such a restricted border, the United States appears to need a population that is willing to work low-skilled jobs for less income. Forty-seven percent of Mexican immigrants who come to the United States do not have a high school education.²²⁰ Roughly 59% of the unauthorized immigrants are from Mexico and work 20%-25% of the low-skilled jobs. Hanson further argues that if the United States were “to restrict or eliminate illegal immigration through greater enforcement, the clear loser would be business owners in labor-intensive industries”²²¹ The loss of this workforce could cause a major disruption to the U.S. economy.

Another popular argument that the CBO can dispute is that illegal immigrants will raise poverty and homeless levels, and will take advantage of government services. According to the CBO, most unauthorized immigrants cannot receive many federally provided benefits because they lack an SSN.²²² The federal government, for example, does not provide need-based programs, such as temporary homes and food stamps, to undocumented individuals. The CBO found that “the amount that state and local governments spend on services for unauthorized immigrants represents a small percentage of the total amount spent by those governments to provide such services to residents in their jurisdictions.”²²³ Along these same lines, the CBO also states that “the tax revenues that unauthorized immigrants generate for state and local governments do not offset the total cost of services provided to those immigrants.”²²⁴ Again, the data presented in literature and researchers dismiss political opponents of lessening border restriction argue that illegal immigrants are the biggest threat to our economy.

For Mexico and the United States, opportunities for economic prosperity are also tied to border relations. For his part, President Nieto has encouraged trade and investments as a key part of foreign policy.²²⁵ This means that positive U.S.-Mexican

²²⁰ Ibid.

²²¹ Ibid., 6.

²²² Congressional Budget Office, “The Impact of Unauthorized Immigrants,” 1.

²²³ Congressional Budget Office, “The Impact of Unauthorized Immigrants,” 1.

²²⁴ Ibid.

²²⁵ Seelke, “Mexico: Background and U.S. Relations,” 8.

relations are imperative for cross-border trade. Mexico is a major U.S. crude oil supplier, and provides many exports, to include automobiles, auto parts, televisions, and other manufactured goods.²²⁶ Mexico and the United States have a mutually beneficial relationship when it comes to the economy. Many of Mexico's exports are U.S.-bound and many U.S. tourists help feed the Mexican economy through tourism and the market for Mexican products. The Mexican economy has much potential to grow, but continued restriction along the U.S. border impacts that prospect. The more difficult it becomes to move products across the border, whether it is due to costs or policy, the more strain it puts on Mexico's economy. Mexico and the United States must focus on the economic opportunities for each of their countries, with regard to border relations. These scenarios would be applicable to Nepal and India if a restricted border were enforced. As was discussed in Chapter II, many Nepalese seek job opportunities in India and vice versa. If a border restriction was enforced it would cause a dramatic shift in the work force for both countries and limit many job opportunities/income sources for many families. A restricted border would also limit trade opportunities for Nepal, as they are very dependent on India's market. The implications on Nepal's economic, nonstate actors shall be discussed in greater detail in Chapter IV.

Overall, the presence of illegal immigrants does not seem to have a strong, negative impact on the U.S. economy and the efforts of border authorities to keep them out have, comparatively, been more costly. While the United States will not remove its restricted border policy any time soon, simply identifying a need to continually harden the southern border is a weak argument. The argument is especially weak when the United States and Mexico benefit from having strong economic relations. In comparison, other countries have lifted a restricted border policy because they realized the economic value in doing so and felt that they could adequately tackle criminal threats by working with neighboring countries where an open border existed. This policy is especially true in European countries that once enforced a restricted border policy, but now have open borders. Sections a through c will analyze this transition, discussing the consequences of Poland and Germany's altered border policy in the context of nonstate actors.

²²⁶ Ibid., 9.

a. Europe's Border Policy

European border policy is an interesting and useful case study for understanding the benefits and consequences of an open border because of the transitions of lifting a restricted border policy. This case study will also help provide recommendations to how India and Nepal can manage nonstate actors, while still keeping an open border policy. Europe had restricted borders until 1995, when some European countries implemented the Schengen Agreement, which currently consists of 26 countries.²²⁷ The Schengen Agreement essentially removed all internal borders and created a single set of rules for policing European borders.²²⁸ Similarly, the EU, originally established in 1951 by six European countries, also emphasizes the need to remove restricted borders, but for economic and security reasons. The goal of the EU is to create a barrier-free trade zone and to enhance economic wealth by creating more efficiency within its marketplace; it currently consists of 28 members.²²⁹ This, in turn, would promote economic and social progress; while at the same time promote a well-balanced and sustainable community.²³⁰ The goal helped Europe move forward economically and socially in the international community, but each country had different experiences when they joined the EU and/or enforced the Schengen Agreement. The goals of the EU and the reasons that Poland and Germany opened their borders are similar to the reasons that Nepal and India have continued to maintain an open border policy. The open market and easy trade regulations creates a stronger economy, thus creating social progress and sustainable border communities. Specifically, the case of Poland and Germany illustrates the challenges faced by differed countries due to the opening of the border. Looking at whether they accomplished the initial EU objectives and how implementing the Schengen Agreement as a border policy affected nonstate actors in both Poland and Germany will help frame security concerns and provide recommendations for border issues in India and Nepal.

²²⁷ "Schengen Agreement," BBC News, accessed September 27, 2014, <http://www.bbc.com/news/world-europe-13194723>.

²²⁸ Ibid.

²²⁹ Investopedia, "European Union," <http://www.investopedia.com/terms/e/europeanunion.asp>.

²³⁰ "What is the Purpose of the EU?" Accessed July 17, 2014, http://www.eu-opsyningen.dk/euo_en/spsv/all/1/.

5. Polish and German Border Security

Like the United States, both Poland and Germany have border security forces. Poland has the Border Guard and Germany has the German Federal Border Police or Zoll/Bundesfinanzpolizei (BPOL). According to the Polish Border Guard's official website, the group focuses on "recognition, prevention and detection of border crimes and prosecution of perpetrators. ... Guarantying safety in the international communication and public order within the territorial area of border crossings and in the border zone"²³¹ and other similar responsibilities. The Polish Border Guard primarily focuses on border countries that are not part of the Schengen agreement.

Prior to Poland joining the EU and implementing the Schengen Agreement, its Border Guard was responsible for implementing border checks and was posted along the German-Polish border to control illegal activities. With that primary responsibility being removed, the Border Guard has had to adjust their role in securing the state. In previous years, the Border Guard had been highly trained to focus on the prevention of illegal drugs and immigrants. The EU and Schengen Agreement, however, have encouraged the free movement of people, which has dramatically changed the dynamics along the border and will be discussed later in this chapter. Despite having a well-trained border security force, Poland still deals with issues related to illegal immigration. The country reported the detection of roughly 2,398 illegals at its borders in 2009.²³² Having an open border and less-focused manpower for border security between Poland and Germany has attracted asylum seekers and illegal immigrants. How this has impacted crime and economic activity in Poland and Germany will be discussed in the economy section of this chapter. The immigration issues along the Polish-German border are starting to spill over into other parts of Europe, leaving the EU to figure out how to mitigate the issues without restricting the border.

In Germany, the BPOL's official website states its mission is to "ensure border security, including the coast, international airports, German railways, and other like

²³¹ "Polish Border Guard," accessed July 17, 2014, <http://www.morski.strazgraniczna.pl/eng/tasks.htm>.

²³² Nelson and Conley, "Border Security in a Time of Transformation," 7.

security services.²³³ The BPOL falls under the German policing structure, and similar to Poland, the border security guards and border checks were eliminated when Germany became a member of the EU and implemented the Schengen Agreement. The border security forces, however, still play a dominate role in overall state security for Germany, due to the country's policing structure. The BPOL is primarily responsible for border and transportation security, leaving few security responsibilities for the central government.²³⁴

For general police forces, each state has its own and is responsible for their activities. They are broken down into three categories: municipal police (first responders and basic aspects of law enforcement), criminal police (criminal investigations and surveillance), and standby police (civil disturbances and disasters).²³⁵ The federal government acts primarily as a coordinator between the police and other entities. Interestingly, even with the aspect of different levels of policing, the German structure still includes community policing. The aspect of community policing was in response to rising criminal activity.²³⁶ Police were responsible for specifically assigned areas in which they were to interact with the public, focus on crime prevention, and accident prevention.²³⁷

The role of Poland and Germany's border security forces was more focused prior the nations' entry into the EU; they were primarily concerned with preventing illegal infiltrations of drugs, people, and goods. Once the two nations joined the EU, however, the border security forces' priorities and security challenges changed. This type of security structure has been effective in both Germany and Poland without costing additional manpower or funds. It is simply a reorganization of existing security forces. This type of security strategy will provide a basis for how India and Nepal can improve a

²³³ POLIS Digital Library, "Policing Profiles of Participating and Partner States," accessed July 17, 2014, http://polis.osce.org/countries/details.php?item_id=17#Country_Profile_Section_211.

²³⁴ Reichel, *Comparative Criminal Justice Systems*, 48–53.

²³⁵ Nadav Morag, *Comparative Homeland Security: Global Lessons* (Hoboken: John Wiley & Sons, Inc., 2011), 226.

²³⁶ Morag, *Comparative Homeland Security*, 226.

²³⁷ Ibid.

border security structure, without closing their border because both India and Nepal currently have various security forces that could be tasked with border issues.

a. *Joining the European Union*

Germany is one of the original six founding members of the EU.²³⁸ Along with the other founding nations (Italy, France, Luxemburg, Netherlands, and Belgium), Germany wanted to maintain peace and security in Western Europe after World War II.²³⁹ On April 18, 1951, these countries' leaders signed an initial agreement to have their coal and steel industries fall under a common management to prevent a country from creating war weapons to be used against another.²⁴⁰ The agreement created peace among the founders and helped boost each other's economies. Eventually, the bond and alliance shared by these founding members transcended among other European countries. By 2004, there were many reasons for Poland to want to join the EU. There were also many reasons why EU founder, Germany, also wanted Poland to join. The addition of Poland as a member would expand the EU's membership toward the eastern side of Europe, which meant opening the border between Poland and Germany. Eastern expansion would help in dealing with the EU's anticipated threats from economic globalization and security risks associated with the opening of the common border throughout Europe.²⁴¹ For Poland to join the EU, and thus open up the German-Polish border, would allow for greater economic benefits and improvement to both countries security infrastructures.²⁴² European relations expert Roland Freudenstein analyzed the motivation for both Germany and Poland to have an open border and, according to him, Germany needed an open border for the following four reasons: to expand its economic interests, for political and geopolitical reasons, and a sense of indebtedness to overall European democracy.²⁴³

²³⁸ Investopedia, "European Union."

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Roland Freudenstein, "Poland, Germany, and the EU," *International Affairs*, 1998, 41.

²⁴² Desmond Dinan, *Ever Closer Union: An Introduction to European Integration* (Lynne Rienner: Boulder, 2005), 143.

²⁴³ Freudenstein, "Poland, Germany, and the EU," 45–46.

Opening borders for economic reasons makes sense. The number of consumers and annual consumption of goods in Germany and Eastern Europe was growing. According to Freudenstein, the open border created a “formidable market for exports—largely from the EU, and within that group, largely from Germany.”²⁴⁴ Politically, Germany would have ended its marginalization of the eastern half of Europe, which could potentially bring about more peaceful relations with Eastern Europe.²⁴⁵ Freudenstein’s argument, that Germany felt indebted to the rest of Europe, however, does not appear to be as concrete as his political and economic arguments. It does, however, fit along the same lines as maintaining peaceful relations. Germany’s support of a shared open border with Poland showed that it was committed to supporting its European neighbors.²⁴⁶ Lastly, the geopolitical argument is perhaps the most compelling and common argument to explain Germany’s border relations, and ties together the other three arguments.²⁴⁷ Having their own political, economic, and social interests, Germany needed to think of how they, as a nation, could help fulfill the EU’s desire for eastern expansion. Germany had a vested interest in economic growth and needed Poland to open its’ border for them to fully succeed. Having a strong supporter or ally in Poland in economic growth, then it would also strengthen regional border relations.

According to Freudenstein and other scholars, Poland’s social and political motivations for joining the EU were similar to the founding members’ initial desire for a unified Europe, specifically Germany’s.²⁴⁸ He mentions, however, an additional reason—modernization.²⁴⁹ The literature on border theory and relations has also argued that modernization has played a role in most border policies. Freudenstein also argues that Poland saw EU membership “as a chance to catch up with European modernity, would entail those steps in restructuring, transformation and institutional reform”²⁵⁰ The

²⁴⁴ Ibid., 46.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Dinan, *Ever Closer Union*, 143.

²⁴⁸ Ibid., 143–148.

²⁴⁹ Freudenstein, “Poland, Germany, and the EU,” 49.

²⁵⁰ Ibid.

reasons discussed by Freudenstein are logical arguments for both countries, but continuously maintaining an open border presents new challenges for both countries. Overall, when Poland joined the EU, thus creating an open border with Germany, it changed Polish-German relations. Understanding the initial transition of both countries will help provide a basis for the nonstate actors that impact the border. These transitions will be discussed in Sections 6 and 7, which cover the economic and criminal impact of opening the Polish-German border. Based on the literature, significant nonstate actors, such as criminal organizations and economic nonstate actors—trade and business corporations—were the principle elements in open border policy. These nonstate actors are used to analyze border relations after the restricted border policy was lifted.

6. Crime

The first year that Poland joined the EU the transition was rather smooth in terms of the economy; however, criminal issues became a large concern for Germany. Initially, the Germans viewed the Poles as petty criminals and illegal laborers.²⁵¹ Despite that reputation, the benefits of having an open border, specifically the Polish market, outweighed the concern over petty crimes.²⁵² The opening of the border, however, allowed criminal organizations to expand their networks and activities with very little effort. Organized criminal networks have been in existence for many years, but the free movement along the border has allowed many organizations to expand their criminal activities. Specific criminal factors that impact border relations are the number of illegal crossings and smuggling from other states, using Poland as a transit country.²⁵³ Security strategists Rick Nelson and Heather Conley found that “Poland serves as a transit country for the trafficking of drugs, arms, alcohol, and cigarettes.”²⁵⁴ These items are smuggled through Poland from neighboring Ukraine go on to other distribution networks throughout Europe. Drug trafficking is a typical cross-border crime along the

²⁵¹ Freudenstein, “Poland, Germany, and the EU,” 53.

²⁵² “Cross-Border Crime: Polish Ambassador Thinks Thieves Have it Easy in Germany,” *Spiegel Online International*, January 2, 2012, <http://www.spiegel.de/international/zeitgeist/cross-border-crime-polish-ambassador-thinks-thieves-have-it-easy-in-germany-a-806798.html>.

²⁵³ Nelson and Conley, “Border Security in a Time of Transformation,” 7.

²⁵⁴ Ibid.

German-Polish border. As drug production of high-demand products, such as opiates and cannabis, has moved to Central Asia, Eastern European countries have become the preferred trade route into Western Europe.²⁵⁵

Specific regulations have also caused a significant increase in smuggling activities along the German-Polish border. According to Nelson and Conley, “European Union countries such as Poland that tried to decrease the consumption of alcohol and tobacco by increasing their prices have almost inevitably led to an increase in smuggling.”²⁵⁶ This is very similar to the case of the United States and Mexico; as long as there is a demand for certain a goods, the network will find a way to thrive.

German and Polish residents have argued that the large wave of immigrants (legal and illegal) have caused criminal rates to surpass standard crime rates. Criminal organizations stealing cars is presented as evidence of this phenomenon. For instance, *Spiegel Online International* reported that “car theft did rise suspiciously in German states bordering Poland when the country became part of the European border-free travel Schengen group in late 2007.”²⁵⁷ *The Economist* reported in September 2013 that the Brandenburg section of the Polish-German border was suffering from a car-theft epidemic, and that Polish gangs are predominately responsible for these car thefts. Prior to Germany and Poland’s open border, *The Economist* reported the theft of only 50 German-owned cars per year. Since the border’s opening, the number of car thefts rose to 350 per year.²⁵⁸ In response, the Germans attempted to create a specialized police task force to deter petty crimes and stolen vehicles.²⁵⁹ However, residents who were the victims of stolen cars felt that the German government needed to do something on a

²⁵⁵ P.C. Van Duyne, *Cross-Border Crime in a Changing Europe* (Hauppauge: NY: Nova Science Publishers, August 2001), 19. Accessed September 28, 2014, http://books.google.com/books?hl=en&lr=&id=rDaCDnLZxG8C&oi=fnd&pg=PR7&dq=Border+Crimes+Poland&ots=v9or9QSFxT&sig=xP7s9k0c_Y2lSMoh7nVoe9C6nXI#v=onepage&q=Border%20Crimes%20Poland&f=false.

²⁵⁶ Ibid.

²⁵⁷ Van Duyne, “Cross-Border Crime.”

²⁵⁸ “Crime in Germany: Car-Theft Epidemic at the Border with Poland,” September 3, 2013, *Economist*, European Politics, <http://www.economist.com/node/21584562/print>.

²⁵⁹ Ibid.

larger scale to mitigate these crimes. As of March 2014, crime rates along the Polish-German border region have not dissipated. Instead of choosing to close the border, however, Germany requested cooperation from Polish police to tackle the criminal networks. The German ministry also insisted that enacting these border control measures did not violate EU law or the Schengen Agreement, which eliminated border checks. As stated by Nelson and Connelly, the “Schengen Border Code provides a safeguard clause that authorizes any country to temporarily reinstate controls at its frontiers within the European Union in the event of a serious threat to public policy or public security.”²⁶⁰ Countries that have also implemented the Schengen Agreement and joined the EU have created an EU-wide coordination among the police, customs, and judiciary to combat terrorism and organized crime.²⁶¹ This collaborative effort from numerous countries to tackle criminal organizations provides a strong example for India and Nepal. As both countries have limited manpower resources, cooperation and coordination among security forces would help limit costs and lower criminal activity. Similar to Nepal and India, Germany and Poland could go back to a restricted border policy, but both countries would be reluctant to close the borders given the positive impact that the open border has had on economic activity, as the next section will discuss.

7. Economy

As mentioned in previous sections of this chapter, the promise of economic growth motivated Poland and Germany to open their border and is the same motivation that Nepal and India have to maintain their open border policy. Trade relations and establishment of business practices has been an important factor in Poland and Germany’s economic growth. Poland and Germany have similar economic structures (rural areas, maritime economies, coastal tourism), but differ in their growth and development patterns.²⁶² Since the opening of the border, Poland currently has a higher

²⁶⁰ Nelson and Conley, “Border Security in a Time of Transformation,” 8.

²⁶¹ “Free Movement of People within in the Schengen Areas,” accessed September 29, 2014, http://www.citizensinformation.ie/en/moving_country/moving_abroad/freedom_of_movement_within_the_eu/free_movement_of_people_within_the_schengen_area.html.

²⁶² West Pomeranian Business School, “Cross-Border Labour Mobility Between Poland-Germany,” Szczecin, Poland, 2012, 6, <http://www.sb-professionals-project.eu/news/Case-Study-Poland-Germany.pdf>.

unemployment rate at 11.5% compared to Germany's relatively low unemployment rate of 4.9%. With the open border, approximately two-thirds of Polish college graduates who are unable to find employment in Poland have sought jobs in other European countries.²⁶³ The statistics explicitly indicate that there was a correlation between the opening of the border and employment rates in European countries. For example, data collected at the West Pomeranian Business School in Poland showed that "between 2004 and 2007 the number of Polish workers taking up employment in other, mostly EU-15 countries, rose from 1 million to 2.3 million."²⁶⁴ This is also seen in the case of India and Nepal, as was described in Chapter II. Nepal has relied heavily on Indian labor to help businesses grow over the last few decades, while many Nepalese have also found job opportunities in India. This beneficial exchange of labor and booming businesses is attributed to the open border policy, as we also see in the case of Germany and Poland.

Although Poland has seen many of its citizens emigrate to other parts of Europe, it benefits deeply by participation in the EU. Those benefits include improving their relations with the European community and boosting its cross-border trade. Meanwhile, the EU become more open to having other countries, such as Ukraine, join it due to the Polish experience of employment growth and the Poland's efforts to improve economic relations with other European nations.²⁶⁵ During its first year as an EU member, Poland provided input for goals for the EU's anticipated 2007–2013 financial perspective.²⁶⁶ The open border policy has benefited Poland's economy by increasing the availability of goods and services to Polish consumers.²⁶⁷ For instance, insurance companies, banks, management firms, and investment funds have significant interest in pursuing business activity in Poland, thus improving consumer options given the greater diversity in offers (lower prices in investments.)²⁶⁸ The Polish consumer has also seen a much larger

²⁶³ Ibid., 9.

²⁶⁴ West Pomeranian Business School, "Cross-Border Labour Mobility," 9.

²⁶⁵ Jaroslaw Brezezinski, "Poland in the European Union-Experiences First Year of Membership," 2005, accessed September 27, 2014, 56, <http://www.msz.gov.pl/resource/fe81bfa6-104f-4827-8c25-8a53266e4f60:JCR>.

²⁶⁶ West Pomeranian Business School, "Cross-Border Labour Mobility," 9.

²⁶⁷ Brzezinski, "Poland in the European Union," 47.

²⁶⁸ Ibid., 46.

expansion in air transport. Jaroslaw Brzezinski, a Polish economist analyst stated that “As Poland acceded to the EU, the market of cheap air carriers started to develop.”²⁶⁹ Travel and tourism helped aid the economy for Polish consumers alike. This aspect of the Poland-Germany case study is important because the availability of services, trade of goods, and tourism is a large part of Nepal’s economy and is a supporting argument to maintain the open border as such activity has allowed the economy to grow and thrive as will be discussed in the following chapter.²⁷⁰

Similarly, Germany has experienced many economic benefits since they opened their border with Poland. Initially, in the 1990s, Germany had incurred a great economic debt with the reunification of Germany and, since then, the country has been striving to move forward toward economic success.²⁷¹ Eastern expansion provided an opportunity for the German economy to regain financial stability.²⁷² For one, the opening of border helped reintroduce trading practices. European economist Christian Keuschnigg claims that “the growth of trade with the East was stronger in Germany than in most other West European countries.”²⁷³ The economic effects of opening a border for an EU country is very much dependent on how much trade is exposed to potential entrants and geographic location. Germany’s trade volume is higher comparatively to other EU countries mainly because it has opened its border with Poland.²⁷⁴ In addition, the open border has helped Germany build a larger and stronger workforce with the larger group of laborers to pick from. According to data on the trading economics website, shows that since the opening of the Polish-German border, Germany has one of the lowest unemployment rates in

²⁶⁹ Ibid.

²⁷⁰ David Zurick, “Adventure Travel and Sustainable Tourism in the Peripheral Economy of Nepal,” *Annals of the Association of American Geographers*, 82, no. 4 (December 1992): 611–612, accessed October 18, 2014, <http://www.jstor.org/stable/2563692>.

²⁷¹ Christian Keuschnigg, “Eastern Enlargement to the EU: Economic Costs and benefits for the EU Present Member States? Germany,” accessed September 28, 2014, 9, <http://www.giante.de/download/osterweiterung/defgerman.pdf>.

²⁷² Ibid., 8.

²⁷³ Ibid., 9.

²⁷⁴ Ibid., 11.

Europe at 4.9%.²⁷⁵ Young, ambitious Polish workers have migrated to Germany to find employment in the German job market. In addition, The Western Pomeranian Business School collected data showing that “highly skilled and qualified Polish workers usually take up jobs in Berlin or in the western region of Germany as there are more opportunities for better remuneration.”²⁷⁶ This massive migration of young and eager workers allowed Germany to take advantage of booming industries and markets. The impact on Germany’s economy due to the open border is also an ideal model for Nepal because after the People’s War, the country was also in a great deal of debt. Yet, because of their open border, the country has been able to improve its economic recovery due to its trading practices with India.²⁷⁷ This key point will be discussed in the following chapter, which focuses on India and Nepal’s nonstate actors-such as trader and laborers-, to help with recommendations and analysis.

The economic benefits of an increase in employment rates and the expansion of markets from the opening of the Polish-German border are evident in both countries; however, there is still room for growth. Poland is still striving to improve their job market, as citizens are more able to find work in Germany, while taking advantage of the country’s open border. Poland still has far fewer available jobs in their local markets and citizens have reported dissatisfaction with their earnings, as well as poor opportunities for advancement in their current jobs, and expressed a need for professional development.²⁷⁸ Another change for Poland as a result of the open border is that many Poles who choose to work in Poland may actually reside in Germany, due to the lower housing costs. Since Poland joined the Schengen Agreement, over 2,000 families have moved to the German side of the border and commute to Poland for their jobs.²⁷⁹

²⁷⁵ “Ieconomics: Euro Unemployment rate,” accessed December 4, 2014, <http://ieconomics.com/unemployment-rate-germany-euro-area>.

²⁷⁶ West Pomeranian Business School, “Cross-Border Labour Mobility,” 16.

²⁷⁷ Pashupati Shumshere J. B. Rana, “India and Nepal: The Political Economy of a Relationship,” *Asian Survey*, 11, no. 7 (July 1971): 645–660, University of California Press, accessed October 15, 2014, <http://www.jstor.org/stable/2642972>.

²⁷⁸ West Pomeranian Business School, “Cross-Border Labour Mobility,” 17.

²⁷⁹ *Ibid.*, 16.

Although Germany has had to deal with criminal activity (such as car theft) and Poland has had to find ways to mitigate drug-trafficking issues, both countries still choose to have their common border remain open. Comparable to Germany and Poland, India and Nepal have a desire to maintain an open border policy for economic opportunities, but are concerned over growing crimes rates. The border controls used to address new threats without damaging growing markets in each of the previously discussed case studies is valuable in recommending border security approaches for India and Nepal. Just as Germany and Poland have done, India and Nepal also expect that sustaining an open border will increase job opportunities and will allow the countries to work together to combat criminal and terrorist organizations. To explore these similarities, the next chapter will take into account lessons learned from the U.S.-Mexican case study and the Polish-German case study, and compare them to the nonstate actors involved in Nepalese-Indian open border situation.

IV. INDIA AND NEPAL: IMPROVING BORDER PROTECTION

Chapter II detailed the history of Indian-Nepalese relations and Chapter III depicted scenarios involving various border policies. The emphasis of this chapter is to assess the impact of nonstate actors on border security along the Indian-Nepalese open border. From this analysis, we will provide recommendations to secure and prevent negative outcomes. The case studies discussed in the previous chapter highlighted criminal organizations and economic factors—traders and laborers—as the key nonstate actors for border evaluation. The same actors will also be analyzed in this chapter. Although the open border facilitates positive relations between both countries, it also allows the unmonitored movement of criminal organizations as well as impacts the flow of economic contributors, such as trade and tourism. The recommendations and evaluations are not to suggest that India and Nepal need to change their border policies, but to provide a way for these two countries to maintain better border practices.

A. THE SIMILARITIES: INDIA AND NEPAL VERSUS UNITED STATES/MEXICO AND GERMANY/POLAND

As Chapter III outlined, the United States-Mexico and Poland-Germany case studies provide a framework for Nepal and India's border, as these states share similar issues. Problems with rising criminal activity, hopes of economic prosperity, political instability that change relations with neighboring countries, and establishing security forces to help with border issues are all tied to the to Nepal-India case study.

Criminal organizations is a nonstate actor that exists despite there being an open border or restricted border policy, as demonstrated by United States-Mexico and Poland-Germany. Criminal and terrorists organizations are actors that Nepal and India are struggling to control, while maintaining an active, open border. As seen in Poland-Germany, an open border allows criminal networks to expand their businesses more easily, since they do not have the obstacle of border checks; however, as a countermeasure, Poland and Germany have implemented their already existing security

structures to help mitigate the impact of such organizations without closing their borders. This scenario will play into the analysis discussed in Section ____ of this chapter.

The nonstate actors—laborers, tourists, and traders—that are the focal point of the economic structure in India and Nepal are a driving force for the border to remain open. The same concept is similar in both the Poland-Germany case study and even the United States-Mexico case study, with their restricted border. For instance, having access to businesses and employees helps a growing economy and provides a source of income for many, especially in the case of Nepal and India. Similarly, an open border with Germany encouraged many Poles to emigrate for job opportunities and cheaper housing. Sustaining these border relationships helps an economy thrive.

Another similar concept in both case studies is the implementation of some type of security force, whether military or specialized, to protect the border. This issue of how and when to implement border checks and/or border security forces was apparent in the two previously discussed case studies. The United States and Mexico have made increasing efforts to secure the border through the use of security forces and technology. In the case of Poland and Germany, the border checks and security forces were removed when Poland entered the Schengen Agreement; however, Germany asked to have the border checks reinstated to help contain criminal activity. Based on the previous case studies, how the border is monitored contributes to border relations between states. As will be discussed later in this chapter, Nepal and India are also in the process of figuring out how to properly implement their security forces in border protection.

These similarities, and the nonstate actors on the Nepalese-Indian border, are discussed in detail in Sections 1 and 2. The analysis of the similarities and current countermeasures to negative, nonstate actors shall provide suitable recommendations for this specific case study's border issues.

1. Crime

Criminal activity is present on both sides of the Indian-Nepalese border. According to Nepal relations expert, Buddhi Narayan Shrestha, “criminal activities such as murder, theft, and rape cases have been increased on the frontier of both countries due

to open border.”²⁸⁰ In addition, another research analyst, Subhkanta Behera, claims that smuggling and trafficking have been easy due to an open and porous border.²⁸¹ Consequently, human traffickers have been able to exploit the underprivileged population in India, while using the open border with Nepal as a route for the illegal movement of people.²⁸² Researchers Sherap Bhutia and Namrata Rai found in their studies that the open border policy and lack of security reinforcement encourages the growing rate of criminal activity.²⁸³ Since the Indian-Nepalese border does not have proper screening for identification documents or other enforced border checks, criminal organizations have an easier time exploiting children and bringing them across the border. Similar to the United States-Mexico case studies, immigrants (legal and illegal) that cross into India are often lured or physically forced by traffickers to participate in illegal activities.²⁸⁴ United Nations Children’s Fund (UNICEF) has reported that over 5,000 Nepalese girls are sold to Indian brothels each year.²⁸⁵ Given their social status, age, and mental abuse by their captors, victims cannot seem to escape the trafficking network. Fortunately, efforts have been made by both the Indian and Nepalese government to launch programs such as Maiti Nepal—an organization to protect Nepalese girls and women from crimes like domestic violence, prostitution, child labor, and various forms of exploitation and torture—resulting in the rescue of many of these young girls and women from brothels and stopping traffickers from crossing the border.²⁸⁶ Besides the trafficking of people, other items, such as drugs and weapons, are smuggled across the border.

The smuggling of drugs and weapons is raising security concerns, especially in Nepal. In 2013, it was reported that there roughly 395,000 illegal firearms in the

²⁸⁰ Shrestha, *Border Management of Nepal*, 74–80.

²⁸¹ Behera, “Trans-Border Identities,” 2.

²⁸² Sherap Bhutia and Namrata Rai, “Human Trafficking in Indo-Nepal Border: Causes and Consequences,” May 2014, accessed October 16, 2014, 70, <http://www.jiarm.com/MAY2014/paper13152.pdf>.

²⁸³ Ibid.

²⁸⁴ Ibid., 72.

²⁸⁵ Shrestha, *Border Management of Nepal*, 90–91.

²⁸⁶ Maiti Nepal, “A Society Free from Trafficking of Children and Women,” accessed October 18, 2014, <http://www.maitinepal.org/>.

country.²⁸⁷ Both countries have seen repeat criminal offenders who are part of larger criminal organizations. The apprehension of smugglers and confiscation of weapons on both sides of the border cause both India and Nepal to be concerned with the purchasing and use of illegal weapons.²⁸⁸ Their presence is a security concern, since association with weapons smuggling is potential terrorist activity, and terrorism is a growing concern for both India and Nepal, as terrorist activity is starting to spill into the heart of each state. Terrorist tactics have raised the level of violent activity in Nepal. From 2009 to 2012, IED activity increased in the Terai region.²⁸⁹ Nepalese security officials have reported explosions killing and injury people in churches and hotels. Terrorist activity and large criminal organizations have also increased the presence of illegal weapons in both India and Nepal. The easy movement illegal weapons across an open border have allowed these supply networks to thrive.²⁹⁰ Various types of guns, gunpowder, and grenades used by criminal organizations and terrorists have been confiscated by the Indian and Nepalese militaries. Specifically, weapons have been found in the western hill districts of Nepal, where 3,300 detonators and 470 fuse wires were being transported from India to Nepal.²⁹¹ Nepalese and Indian security officials believe that “these unregistered and unlicensed arms and ammunitions might have been transported illegally because of the weakness of unrestricted border.”²⁹²

Many criminals still remain at large, in both India and Nepal, because they have been able to use the open border to escape arrest. For example, a Parliamentarian was

²⁸⁷ Himalayan News Service, “Smuggling of Small Arms up in Valley,” April 12, 2014, *The Himalayan*, accessed October 24, 2014, <http://www.thehimalayantimes.com/fullNews.php?headline=Smuggling+of+small+arms+up+in+valley&NewsID=411587>.

²⁸⁸ Himalayan Times, “Six Indians Arrested with Arms, Ammunition,” *The Himalayan*, modified February 27, 2014, <http://www.thehimalayantimes.com/fullNews.php?headline=Six+Indians+arrested+with+arms%E2%80%9A+ammunition&NewsID=407204>.

²⁸⁹ United States Department of State, Bureau of Diplomatic Security, “Nepal 2012 Crime and Safety Report,” February 2, 2013, accessed October 18, 2014, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13650>.

²⁹⁰ Ben West, “Pakistan and the Naxalite Movement in India,” November 18, 2010, accessed September 14, 2014, *Security Weekly*, http://www.stratfor.com/weekly/20101117_pakistan_and_naxalite_movement_india?0=ip_login_no_cache%3D163638603ed64b87ec879a170fec8fc0#axzz3IKBWGQEM.

²⁹¹ Shrestha, *Border Management of Nepal*, 74–80.

²⁹² Muhamma Zamir, “India faces internal challenge from Maoist-Naxalites,” September 16, 2013, accessed August 28, 2014, <http://www.thefinancialexpress-bd.com/index.php?ref=MjBfMDIhMTZfMTNfMV85MI8xODM1NDA>.

shot to death in India June 1998, but the gunman was never captured because it was believed he crossed over the border to Nepal and flew to a third country.²⁹³ Research argues that the degree of law enforcement, economic capital, and the social and political environment have all helped contribute to the rise in criminal activity along the border. Despite the countries' efforts, border management between Nepal and India is very weak because of miscommunication between Nepalese and Indian officials, allowing criminal behavior to thrive. As an example, there is no practice of recording keeping of people or enforced patrolling of the border. Both countries individually, however, have started to make an effort to create a security force and other legal frameworks that will be discussed in Section B of this chapter.

2. Economy

The Nepalese and Indian economies are largely based on agriculture, trade and industry, and tourism.²⁹⁴ In India, labor productivity in the agricultural sector started in the 1970s, with the green revolution,²⁹⁵ which introduced the practice of “high-yielding varieties of seeds after 1965 and the increased use of fertilizers and irrigation . . . which provided the increase in production needed to make India self-sufficient in food grains.”²⁹⁶ To this day, agricultural employment in India is very high. Nepal economist Kishor Sharma reported that in Nepal, “87% of the population live in rural areas and rely on agriculture as a major source of income and employment.”²⁹⁷ Yet, due to population growth and poor agricultural practices, profits from agriculture are starting to decline. Consequently, India has exported produce and other basic necessities to Nepal.

²⁹³ Shrestha, *Border Management of Nepal*, 91.

²⁹⁴ Rose, “Nepal: Strategy for Survival,” 17.

²⁹⁵ Barry Bosworth, Susan M. Collins, and Arvind Virmani Virmani, “Sources of Growth in the Indian Economy,” February 2007, 18, accessed October 2, 2014, <http://www.nber.org/papers/w12901>.

²⁹⁶ U.S. Library of Congress, “Green Revolution,” accessed October 2, 2014, <http://countrystudies.us/india/104.htm>.

²⁹⁷ Kishor Sharma, “The Political Economy of Civil War in Nepal,” 2006, *World Development*, 34, no. 71237-1253, accessed October 1, 2014, http://ac.els-cdn.com/S0305750X06000623/1-s2.0-S0305750X06000623-main.pdf?_tid=482cdfbc-53dd-11e4-ab57-00000aabb0f02&acdnat=1413317239_9ae16de4e232547afe6ec50bce5c7cd5.

Tourism over the last decade has helped improve the Nepalese economy by advertising “adventure travel” as part of tourist industry.²⁹⁸ Adventure tourism advertises and attracts an audience that seeks exotic and unknown places, often in developing countries.²⁹⁹ Essentially, tourism allows Nepal to link with other sustainable markets, thus changing the productivity of Nepal’s economy. The benefits of tourism on Nepal’s economy are mainly due to the country’s relationship with India and the opening of their shared border in 1951. The opening of the border encouraged foreigners, to include Westerners, to visit Nepal as well as India.³⁰⁰ According to South Asia travel expert David Zurick, the impact on Nepal is that locals and businesses have to “rely heavily on the importation of goods, the use of local natural resources, and the formation of new social arrangements.”³⁰¹ Consequently, the ability to move goods and people from India to Nepal has been crucial to successful tourism.

Nepal and India’s trading relationship also impacts the economy and further emphasizes Nepal’s dependency on India. Apart from the northern part of Nepal, the country has become very dependent on India for economic support. For instance, many Nepalese industries near the Indian border use the Indian railway systems and market; thus, 98% of Nepal’s trade is with India.³⁰² According to the literature, the reason for this is because of the country’s undeveloped status. The more independent and stable that a country is, the more likely it is able to adequately generate domestic revenue.³⁰³ As stated in previous chapters, Nepal depends a great deal on India, especially in terms of trade and business relations. Many skilled laborers emigrate from India to Nepal and

²⁹⁸ David Zurick, “Adventure Travel and Sustainable Tourism in the Peripheral Economy of Nepal,” *Annals of the Association of American Geographers*, 82, no. 4 (December 1992): 608, accessed October 18, 2014, <http://www.jstor.org/stable/2563692>.

²⁹⁹ Ibid., 610.

³⁰⁰ Ibid., 611–612.

³⁰¹ Ibid., 618.

³⁰² Rana, “India and Nepal,” 652.

³⁰³ Siddiqui, R. Osmani and B. B. Bajracharya, “The Economic Development of Nepal: A Long-Term Perspective,” (Academic Paper, University of Ulster, March 2007), 6.

work in the industrial sectors.³⁰⁴ The employment of such workers has helped productivity in many industries, but has also increased Nepal's dependency on India. The disparities in the two economies and the need for Nepal to have a relationship with India, is due to the difference in size of the economies. The domestic market and natural resources are much larger in India, compared to Nepal.³⁰⁵ Having a large, domestic market limits India's need to depend on trade as the primary source of its economy. For Nepal, the need to distribute goods to as many outside markets as possible is crucial to the survival of the economy. Since Nepal is a landlocked country, it is very dependent on India to gain access to the sea for the distribution of goods.³⁰⁶ Consequently, open border access has allowed Nepal's economy to function. If the practice of a restricted border was implemented, the Nepalese would be severely constrained by its inability to generate adequate domestic revenue.³⁰⁷

B. COUNTERMEASURES: NEPAL AND INDIA'S LEGAL AND ORGANIZATIONAL FRAMEWORKS

A stabilized law-enforcement structure serves as a critical element of society in cases of counterterrorism efforts, traditional policing, border security, and intelligence. Most successful governments have some organization that encourage—or coerce—civil society to adhere to the laws and regulations that the rightful authorities set forth, otherwise known as policing. These structures can be enforced by a civilian police agency, a military policing agency, or, at times, both. In the case of an emerging democracy,³⁰⁸ such as Nepal, where the laws have yet to be established, effective

³⁰⁴ Smruti S. Pattanaik, "Indo-Nepal Open Border: Implications for Bilateral Relations and Security," July 15, 2008, Institute for Defense Studies and Analyses, accessed October 16, 2014, 469, <http://www.tandfonline.com/doi/pdf/10.1080/09700169808458825>.

³⁰⁵ Rana, "India and Nepal," 654.

³⁰⁶ Ibid.

³⁰⁷ Osmani and Bajracharya, "The Economic Development of Nepal," 6.

³⁰⁸ Emerging democracies are defined as the "rise of political structures and behaviors without central planning and by the action of many individual participants," or better defined as the power of organizations without organizations. This term is best used when describing a young or fragile democracy. Many questions must be answered in an emerging democracy in order for it to become more established. Who are the actors in this emerging form of government and what are their roles? What are the threats? Who and what are the responsibilities of the country's leader? And, most importantly, who are the responders and what are their duties in times of crisis and every day duties?

policing can be challenging while the country waits for clear constitutional and statutory guidance about roles, missions, jurisdiction, limitations, etc. In the case of a paramilitary, where it takes on characteristics of both a military policing agency and a civilian police agency, needs such guidance, since at times it causes issues with overlapping authority.³⁰⁹ The establishment of security forces (police, military, and paramilitary) are all useful countermeasures to domestic issues, but have not successfully been used in dealing with cross-border issues, which requires a joint effort between India and Nepal. The Role of Law Enforcement Sections will detail the roles of India and Nepal's security forces. This will help determine if they are an acceptable countermeasure in dealing with the aftermath of the earlier described nonstate actors and, if not, what recommendations can be made to improve these security forces for better border protection.

1. Role of Law Enforcement in Nepal

a. Police

The Nepalese police force is the main administrative tool to safeguard the peoples' constitutional rights and, as the APF, to maintain law and order in the country.³¹⁰ The functions of the Nepalese police are similar to that of the APF and the Nepalese Army.³¹¹ They focus on general security, rehabilitation, disaster management, security awareness, and crowd control;³¹² however, they differ in their main tasks because they primarily focus on crime control and criminal investigation.³¹³ The police force is also independent of the Nepalese Army. The police also lack resources and training, although they are responsible for investigating and addressing criminal activity in Nepal. The Army, however, receives far better training than the APF and police do.

³⁰⁹ Andrea Hernandez, "Policing Structure and the Role of Paramilitary Organizations" (unpublished manuscript, September 17, 2012), Word file.

³¹⁰ Nepal Police Force, www.moha.gov.np, accessed October 28, 2014.

³¹¹ "The Police Reform Commission was constituted in the year 1992 and Modernization of the Police Organization started to tune with the aspirations of the people and norms of Multi-Party system" (www.nepalpolice.gov.np). There are four departments that are responsible for policing activities within the headquarters of the police force. They are the Crime Investigation Department, Administration Department, Operations Department, and Human Resource Development Department.

³¹² Nepal Police Force.

³¹³ Hernandez, "Policing Structure."

They are not only trained in their country, but in India and the United Kingdom as well.³¹⁴ Similar to the Police and APF, however, the Army needs to improve its capabilities, both operationally and tactically. They lack proper methods of communication in training exercises, intelligence gathering, and lack the necessary skills to arrest criminals and protestors.

As protests occur due political tension in Nepal, many on the police force have been tasked with trying to maintain peace within major protest cities in Nepal.³¹⁵ The police have noticed that protestors' methods have become more violent in major cities, such as Pokhara and Kathmandu, in the last few years, to include the use of weapons. An example of such violent activity was reported in the Nepal 2014 Crime and Safety Report. The report stated that "one individual was killed and several injured in sporadic violence in the run-up to the November 19, 2013, Constitutional Assembly elections. During this period, police and army bomb squads discovered more than 100 improvised explosive devices (IEDs), of which about 1/3 were in the Kathmandu Valley."³¹⁶ How the weapons and material are obtained by locals is another question, but speculation by police has caused them to believe that most of these items are smuggled illegally into Nepal and distributed to potential buyers.³¹⁷ As stated in Sections 1 and 2, this is most likely due to a lack of police monitoring or an inability to analyze how criminal organizations are taking advantage of the open border. The inability of police forces to control such issues is because the police lack training in handling certain nonstate actors that ply their trade on the border, but stems mostly from a lack of shared communication with other security forces within Nepal. Other security forces in Nepal have more hands-on experience and information regarding border issues. These forces include the Nepalese

³¹⁴ Karon Cochran-Budhathoki and Colette Rausch, "Nepal in Transition: Developing Security and Rule of Law Strategies," *United States Institute of Peace*, accessed October 29, 2014, <http://www.usip.org/publications/nepal-transition-developing-security-and-rule-law-strategies>.

³¹⁵ "Nepal Police fire at protestors," BBC News, January 26, 2006, accessed September 15, 2014, http://news.bbc.co.uk/2/hi/south_asia/4649256.stm.

³¹⁶ United States Department of State, Bureau of Diplomatic Security, "Nepal 2012 Crime and Safety Report," February 2, 2013, accessed October 18, 2014, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=15825>.

³¹⁷ Ibid.

Army and the Armed Police Force. Their role in security and border protection will be described next.

b. Military

The Army's supports Nepal's quest for development and disaster management.³¹⁸ They have been the main tool in opening up remote areas for road and bridging projects.³¹⁹ The Army also established a national rehabilitation center for those individuals that were wounded during wars and conflict. As stated on the Nepalese Army's official website, "Tasks such as assisting development activities, conservation of nature, disaster management, etc., have been viewed as secondary roles, the contributions of the Nepalese Army in such areas are unparalleled in the country. The Army is viewed as the lead actor in many of these roles."³²⁰ When it comes to issues of border security, however, the Army has had considerable experience due to the civil war. During the People's War, the Army was tasked with the engaging Maoist insurgents, many of whom had taken advantage of the open border as a means of smuggling weapons.³²¹ The Nepalese Army focused on strategies that could prevent any rebel activity between India and Nepal in order to better secure the state; however, since the end of the war, those border tactics and experiences have no longer been a priority in the Army's duties.

c. Paramilitary

According to the APF's mission statement on their website, the main purpose of the APF is to "maintain law and order and containing insurgency cracking down terrorist activities."³²² They have also become very active in peacekeeping operations in support of the United Nations (UN). This has caused friction with the Army, since these missions

³¹⁸ The official definition of a disaster according to the Government of Nepal is a major incident which causes a serious disruption to life, arising with little or no warning, causing or threatening death or serious injury to, or rendering homeless, such numbers of persons in excess of those which can be dealt with by public services operating under normal procedures, and which calls for the special mobilization and organization of those services. Nepalese Army, [www.nepalarmy.mil np](http://www.nepalarmy.mil.np), accessed October 27, 2014.

³¹⁹ Nepalese Army, www.nepalarmy.mil np, accessed October 27, 2014.

³²⁰ Ibid.

³²¹ Li Onesto, "Indian Army Intervenes Against the Nepal People's War," April 3, 2005, accessed October 28, 2014, <http://revcom.us/a/1273/nepal-india-intervenes.htm>.

³²² "Armed Police Force," accessed October 28, 2014, www.apf.gov.np.

are often highly compensated for by the Nepalese government. In everyday tasks, the APF is involved in “policing jobs of security of VIPs, installations and facilities in the events of riots and public unrest; however, its biggest responsibility is combating terrorism, controlling transborder crimes, and safeguarding the sovereignty of the nation alongside the Nepal Army.”³²³ There are also other tasks that APF has been recently assigned, such as dealing with natural disasters.³²⁴ Compared to the Nepalese police, APF forces are well equipped with weapons compared to the criminal organizations and Maoist rebels. Yet, operationally speaking, they lack radios to communicate with other units, lack sufficient military aviation assets (such as helicopters), and are not properly trained in strategic intelligence.³²⁵ The APF would also be best suited for the internal threats that Nepal is faced with: a rise in criminal activity, religious and ethnic protests, and border security threats. Other criminal issues that have been on the rise are burglary, theft, smuggling, human trafficking, and crossborder looting.³²⁶ The police, who should be responsible for handling criminal issues, are not suited to address these problems and using the military would be too strong of a response. Moreover, it would not necessarily be something that the military has handled in the past. A paramilitary force, however, could handle such issues.

2. Role of Law Enforcement: India

a. Police

Similar to Nepal, India has a rather large police structure. The Indian Police Security (IPS) force focuses primarily on public safety and security. The IPS assures the security of the Indian states through the maintenance of law and order, crime prevention and detection, traffic control, and accident prevention and management.³²⁷ Interestingly,

³²³ “Armed Police Force.”

³²⁴ Armed Police Force Act, 2058, accessed October 28, 2014 http://www.ncf.org.np/upload/files/17_en_armed-police-force-act-2058-2001-e.pdf.

³²⁵ Karon Cochran-Budhathoki and Colette Rausch., “Nepal in Transition: Developing Security and Rule of Law Strategies,” *United States Institute of Peace*, accessed October 29, 2014, <http://www.usip.org/publications/nepal-transition-developing-security-and-rule-law-strategies>.

³²⁶ Nepal Police Force.

³²⁷ Civil Service India, accessed October 24, 2014, <http://www.civilserviceindia.com/Indian-Police-Service.html>.

border duties have now been added as part of the IPS's responsibilities. Specifically, those border responsibilities are to help with crime prevention, counterterrorism, border policing, and tackling smuggling and drug-trafficking issues.³²⁸ Although these are not the primary duties of the IPS, it is clear that uncontrolled nonstate actors are impacting security issues in India. For example, the IPS has seen an increased number of human trafficking cases that involve women and children from Nepal, as well as the presence of illegal drug that come across the open border.³²⁹ Being able to control these issues has been a large task for the IPS throughout India.³³⁰ The IPS needs to understand the origin, transit, and destination of human and drug trafficking,³³¹ As understanding the activities that occur along the border would benefit IPS in apprehending criminals on their side of the border. This means, however, that IPS must be aware of incidents that occur at the border. Unfortunately, given that IPS border responsibilities are not part of their primary tasks, they have not dedicated their resources and time to dealing with this issue. They have also not been able to coordinate among other security forces (military and paramilitary) to obtain information or updates on border activities, especially along the open Nepalese-Indian border. The other protection forces, military and paramilitaries, also responsible for maintaining security in India have also struggled with similar issues, as will be discussed in Sections b and c.

b. Military

The Indian military is based on tradition and focuses on the strength of military unity.³³² Initially, their structure and focus had been influenced by British rule, but over time, the focus and values of the Indian military has become much their own. The issues

³²⁸ "Service Profile for Indian Police Services," accessed October 24, 2014, http://mha1.nic.in/pdfs/IPSPProfile_180314.pdf.

³²⁹ Ibid.

³³⁰ CIDAP.GOV, "Crime Investigation Department, Andhra Pradesh: Human Trafficking," accessed November 2, 2014, <http://www.cidap.gov.in/Wings/ViewPDF.aspx?pdf=../Wings/PDF/WPC/hUMAN%20tRAFFIKING%20FOR%20WEBSITE.pdf>.

³³¹ Ibid.

³³² Official website of the Indian Army, last accessed October 23, 2014, <http://indianarmy.nic.in/Site/FormTemplate/frmTempSimple.aspx?MnId=xNXQiH75yUO3hNUEQRyhbW==&ParentID=u/G5EKke66Hsl2M+V7TB3Q==>.

that the military focuses on are terrorism and potential nuclear threats within India. They also are focused on potential security threats with neighboring countries, such as Pakistan.³³³ The issue of terrorism in India has been blamed on the exploitation of terrorist organizations taking advantage of the Indian-Nepalese border. Terrorists are either residing in Nepal or come to Nepal to easily cross the open border into India. The Indian Army has been deemed by the Indian government as best suited for dealing with terrorist organizations, since many of these terrorists train and execute attacks with military precision.³³⁴ Unfortunately, this has not been proven to be the case. The deadly tactics used by terrorists has led many military units to surrender during attacks or have suffered great losses (people and equipment damage) as they are unprepared for handling such situations. This is seen in the case of the Mumbai attacks in 2008, when terrorists were able to use weapons and explosives in deadly attacks that killed over a hundred people.³³⁵ The Mumbai attacks lasted for three days and, as security officials analyzed how a terrorist attack could have happened, they concluded that it was due to issues of delayed information sharing and lack of security preparedness.

Terrorist networking and activities could be better monitored if the military put more effort into understanding how the networks take advantage of the open border. As discussed earlier, terrorist organizations have been able to take advantage of an open border for smuggling of material for attacks and for escaping authorities. Although the focus of the Indian Army is not to serve as a border guard, they should still be in contact with and train with other Indian security organizations to be aware of potential threats at the Nepalese-Indian border.³³⁶ Also, if military training focused more on responding to terrorist activity and how to detect organizations taking advantage of the weak borders, the country could more effectively deal with terrorist nonstate actors.

³³³ Anna Orton, *India's Borderland Disputes: China, Pakistan, Bangladesh, and Nepal* (Epitome Books: New Delhi, 2010), 71–92.

³³⁴ Zubair Ahmend, “Hindu Terrorism Debate Grips India,” November 21, 2008, BBC News, accessed November 2, 2014, http://news.bbc.co.uk/2/hi/south_asia/7739541.stm.

³³⁵ Ahmend, “Hindu Terrorism Debate Grips India.”

³³⁶ Keshab Poudel, “The Border Life,” May 22, 2013, *New Spotlight*, accessed November 2, 2014, <http://www.spotlightnepal.com/News/Article/The-Border-Life>.

c. Paramilitary

Unlike Nepal, India's paramilitary—the Border Security Force (BSF)—has a very distinct role. The BSF is India's main border security force³³⁷ and according to the official BSF website their primary task is “guarding India's land border during peace time and preventing transnational crime.”³³⁸ Although the BSF is essentially a border security force, most of their efforts have been to serve as a support force to both the police and the army. Examples of this are when the BSF provides maintenance of law and order when the civil police force is not present or is unavailable. They also help protect Army installations, even though such installations are under the Army's operational control. The BSF's efforts as a support system have proven to be helpful to both the police and the military; however, it has limited their ability to accomplish their primary duty of securing the border. In addition, other tasks have been assigned to the BSF according to their website to help counteract new domestic threats including “action against paramilitary or irregular forces of the enemy within the overall plan of the Armed Forces, performing special tasks connected with intelligence including raids, and acting as guides in an area of responsibility where routes are known.”³³⁹

Unfortunately, with manpower and time being dedicated to a supporting role, the BSF has put most of their focus on closed border, such as the Indian-Pakistani border. This border is considered a greater threat and is also a primary focus for the Indian Army. Even minor monitoring from the BSF on the Nepalese border could help with smuggling activities and reports of suspicious activity could help inform Indian and Nepalese police of potential criminal acts.

As a result of the BSF acting as a supporting force to India's military and police forces, India also established another border paramilitary force called the SSB. Since 2001, the SSB has been tasked to focus on the Indian-Nepalese border and is a newer security force compared to the BSF. This border force is tasked with ensuring the security of border residents and to focus on issues of smuggling. As an example, New Delhi

³³⁷ Border Security Force, BSF, accessed November 1, 2014, <http://bsf.nic.in/>.

³³⁸ Ibid.

³³⁹ Ibid..

Television Limited (NDTV) reported that the SSB had successfully apprehended a human trafficker, saving 11 young girls from being distributed to brothels.³⁴⁰ Despite these types of success stories, the SSB is still in need of manpower and training to better apprehend and protect the Nepalese-Indian border. As the tactics of smugglers and other criminal organizations improve, the SSB needs to be better prepared. This means that they would need better weapons, shared intelligence information, and better distribution of their forces throughout the Nepalese-Indian border.³⁴¹

Now that the countermeasures—security forces—have been described in each state, Section C will provide recommendations on how to improve these security forces and how to handle the nonstate actors described earlier.

C. RECOMMENDATIONS

Given the presence of violence and illicit activity along the Nepalese-Indian open border, the question remains: what should the Nepalese and Indian governments do to protect their shared, open border? Even with both countries concerned about the activity of criminal organizations, the reality is that India and Nepal already have the necessary tools to mitigate negative impacts and keep their border open.³⁴²

There are three suggestions to better protect the Nepalese-Indian border:

- Both countries should establish a stronger and more unified paramilitary force strictly dedicated to border security.
- Both countries should improve information sharing between their internal and external security forces.
- Keep their shared border open.

³⁴⁰ New Delhi Television, All India, “11 Nepalese girls rescued in Uttar Pradesh, one man held,” April 15, 2014, accessed November 4, 2014, <http://www.ndtv.com/article/india/11-nepalese-girls-rescued-in-uttar-pradesh-one-man-held-508762>.

³⁴¹ Arunav Sinha, “Sashastra Seema Bal-young at 50,” *The Times of India*, December 10, 2013, accessed November 4, 2014, <http://timesofindia.indiatimes.com/india/Sashastra-Seema-Bal-young-at-50/articleshow/27191940.cms>.

³⁴² “Militant groups active on India-Nepal border: SSB DG,” October 20, 2014, *Daiji World*, accessed November 2, 2014, http://www.daijiworld.com/news/news_disp.asp?n_id=271468.

These recommendations are based on the United States-Mexico and Germany-Poland case studies, and the type of nonstate actors involved on the Indian-Nepalese border.

The first recommendation is to have Nepal and India enforce the primary responsibilities of their paramilitaries as border security forces, and not necessarily as support forces, which will help monitor illegal activity along the border. Specifically, the only duties the AFP should have are to monitor the open border and focus on the criminal organizations and traffickers that take advantage of it. Currently, AFP's duties deter them from properly monitoring the border, since they are constantly providing support to the Army and police forces. The AFP has enough manpower and weapons to work as a proper border force. The Nepalese government must simply focus on training the AFP on border-related issues; doing so could help minimize the presence and activity of criminal organizations along the Indian-Nepalese border. Although India already has two border security forces in place, it should only have only *one* border security force, in order to save money and prevent issues of overlapping jurisdiction. The SSB and BSF should either be combined, or the BSF needs to be absorbed by another security force, such as the Army, with whom they already play a large supporting role.

Currently, when the paramilitaries in India and Nepal are performing border duties, they only seem to concentrate on the closed borders; the open border, however, could use also some assistance. This is not to say that the Nepalese-Indian border should become restricted, as trade and free movement along this border is a valuable asset to both India and Nepal. The suggestion is merely to create a semiobstacle for illegal activities along that border. Knowing that the border could be monitored or that it could have the presence of security forces has the potential to hinder the smuggling of people and goods. This is the same tactic that Germany and Poland implemented once they saw the growing activity of criminal organizations along their common border. The presence of some type of security simply provided a safer border environment. Moreover, the security forces in Poland and Germany understood their boundaries and uphold the policies of the EU and the Schengen Agreement. Both India and Nepal have paramilitaries that focus on domestic issues, but also have military capabilities. The

creation of these border forces leads into the next recommendation that there should also be improved information sharing. Improved Nepalese and Indian border paramilitaries would result in forces that would have to collaborate by sharing information on border activities on both sides of the border.

Poor communication and intelligence sharing has caused problems in properly responding and apprehending criminals, both internally and between the Nepalese and Indian security forces. Having a standardized system for information sharing among the Indian and Nepalese governments could significantly improve security practices. Both Nepal and India have recognized the need for security cooperation to minimize illegal activity at the border³⁴³ and both countries have recently started improving their intelligence-sharing activities to guard against security threats along their 1,880-km border.³⁴⁴ As a result of this cooperation, both countries are seeing positive outcomes already, to include increased apprehensions of traffickers and smugglers along the border.³⁴⁵ If Nepal and India continue to improve their intelligence sharing and security training, they could help each other become more aware of and prevent potential threats. Actions that could help improve training and information sharing include having joint access to a database system and joint training. The database could include the names and identifications of people crossing the border, high-profile criminals who remain at large, etc. The AFP and SSB could also attend joint training sessions so that they can respond with similar procedures and drills when a smuggler or trafficker is trying to cross the border, or if an attack by a terrorist organization occurs. The act of joint monitoring effort along the border could also allow better coverage of the different points of entry. Currently, the SSB has more than 466 border outposts (BOPs), compared with 87

³⁴³ Buddhi Narayan Shrestha, "Talk on Open Border in International Conference," July 25, 2014, accessed November 4, 2014, <http://bordernepal.wordpress.com/2014/07/25/talk-on-open-border-in-international-conference/>.

³⁴⁴ Kosh Rah Koirala, "Nepal, India, increase border security co-operation," *Khabar South Asia Newsletter*, October 24, 2014, accessed November 2, 2014, http://khabarsouthasia.com/en_GB/articles/apwi/articles/features/2014/10/24/feature-01.

³⁴⁵ Rahi Gaikwad, "Locals suffer due to crackdown on Indo-Nepal cross-border trade," December 9, 2013, *The Hindu*, accessed November 3, 2014, <http://www.thehindu.com/news/national/other-states/locals-suffer-due-to-crackdown-on-indonepal-crossborder-trade/article5433711.ece>.

outposts established by the APF.³⁴⁶ The presence of these suggested border emplacements is not intended to restrict the privileges of free movement, but, rather, to apprehend the groups and individuals that try to abuse the benefits of an open border.³⁴⁷

Lastly, it is recommended that India and Nepal maintain an open border and focus on improving local programs to prevent domestic issues from spilling over the border, such as Mexico has done. The idea or action of the closing the border would not resolve issues involved in combating criminal organizations; rather, it would cause tension between Nepal and India, and would likely cause severe damage to the Nepal's economy. Nepalese politician Dil Bahadur Gharti said,

There were no doubt that the problems of organized crime, drug abuse and trafficking posed serious threats to modern society. Those crimes had now been transformed to become transnational organized crimes . . . Nepal recognized the fact that continuous drug traffic could damage the country . . . [and] was committed to the fight against drug abuse and trafficking, and the country had strengthened its judicial and legal systems to better cope with those problems.³⁴⁸

If Nepal were able to address their border security issues by approaching them through domestic means, it would limit the concern of those issues spilling over into India and vice versa. Essentially, what is required of both India and Nepal is to develop better educational programs for the population and provide better job opportunities. Gharti also stated that “In order to reduce [drug and trafficking] demand, employment opportunities needed to be provided for youth. Youth should also be educated about the adverse impacts of drugs. To control supply, economically rewarding crop substitution programmers should be implemented, and alternate employment opportunities for poor farmers needed to be offered.”³⁴⁹ These incentives and programs are similar to the approaches being taken in Mexico. As stated in the United-States-Mexico case study in Chapter III, the implementation of these programs has helped reduce violence and

³⁴⁶ Koirala, “Nepal, India, increase border security.”

³⁴⁷ Gaikwad, “Locals suffer due to crackdown.”

³⁴⁸ United National Information Services, “Links between Terrorism, Drug Trafficking, Illegal Arms Trade Stressed in Continuing Third Committee Debate on Crime,” October 5, 2000, accessed November 1, 2014, <http://www.unis.unvienna.org/unis/pressrels/2000/shc302.html>.

³⁴⁹ United National Information Services, “Links between Terrorism.”

criminal organization activities in many parts of Mexico. For Nepal and India, such programs would also help to reduce violence in many parts of Nepal because many individuals that get involved with drug and human trafficking often have no other resources, thus turning to criminal activity as a means of survival.³⁵⁰ Therefore, the solution of a restricted border is unreasonable; enforcing multiple restrictions on two countries that share so much history—and when Nepal is very dependent on India for military security and India depends on Nepal for job opportunities—would only cause more security concerns.³⁵¹

It is imperative that any means that Nepal and India take to protect their border do not result in a restricted border and do not harm the positive relationship between the two countries. Controlling the nonstate actors through stronger security forces is the only way to protect and preserve the open border.

³⁵⁰ Shrestha, “Talk on Open Border Conference.”

³⁵¹ Gaikwad, “Locals suffer due to crackdown.”

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V. CONCLUSION

From the case studies provided and the circumstances surrounding Nepal and India's relationship, managing borders is a challenging and complex task. From the research presented, the analysis draws the conclusion that controlling nonstate actors helps secure a border, rather than enforcing restricted border policy. In the case studies that displayed both open and restricted border policies, issues of crime and economic dependency existed. The concept of an open border makes it easier to move goods and people, thus driving an economy. For security reasons, however, some states choose to harden their borders as a precautionary step to prevent external threats.

The hardening of a border occurs either through law, treaty, or the use of security forces. The cost of reinforcing these borders, as seen in the case of the United States and Mexico, can cause more damage to international relations and a state's economy. Even the practice of unrestricted borders, such as exists between Poland and Germany, there is a price to pay. Crime rates can increase, thus putting border communities at risk and can result in military or police response. These scenarios put states in a difficult situation when choosing an effective border policy; but, in reality, it is through a state's ability to control nonstate actors that a state can measure the security of its borders.

In the case of India and Nepal, there are overarching security issues with criminal and terrorist organizations that impact their open border. These types of activities have caused critics of the open border policy to go as far to suggest restricting the border. The impact of a restricted or closed border, however, would have detrimental impact on Nepal's economy and would strain their relations with India. Even if a restricted border existed between India and Nepal, there is always the possibility that there would be an "underground" method of moving goods and merchandise through the illegal entry points of the border. Smuggling networks will always find a way to manipulate the system

A secure border is based on the actions that a state takes to control nonstate actors and understanding the importance of economic relations. This can only be accomplished through collaboration—the sharing of information and resources. For India and Nepal,

the future of their open border's security is based on whether or not they can find ways to implement their security forces to control domestic and cross-border criminal actors by using their paramilitaries as a border security force that does not violate the policies of an open border. This would help ensure the security of their border and allow for open transit, thus permitting laborers and businesses to continue to thrive in both India and Nepal.

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